



Confidential.

HYDERABAD.

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PROCEEDINGS

OF THE

CONSULTATIVE COMMITTEE

OF THE

ROUND TABLE CONFERENCE

1932.

(With Appendices:—I. Memorandum on Statutory Control of Railways by Brig.-Gen. F. D. Hammond, C.B.E., D.S.O.—see pages 65 to 112— and II. Circular No. 5, dated 18th February, 1932—see pages 113 to 115.)

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VOLUME II.

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PROCEEDINGS OF THE CONSULTATIVE COMMITTEE OF THE  
ROUND TABLE CONFERENCE AT A MEETING HELD IN THE  
COMMITTEE ROOM IN THE VICEROY'S HOUSE, NEW DELHI,  
AT 10.30 A.M., ON THURSDAY, THE 3RD OF MARCH, 1932.

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*Present :* HIS EXCELLENCY LORD WILLINGDON (*Chairman*), THE HON.  
SIR HENRY MONCRIEFF-SMITH (*Vice-Chairman*).

*Members :* SIR MANUBHAI NANDSHANKAR MEHTA, NAWAB SIR  
MUHAMMAD AKBAR HYDARI, NAWAB LIAQAT HAYAT KHAN,  
RAO BAHADUR V. T. KRISHNAMACHARI, SIR MIRZA MUHAMMAD  
ISMAIL, THE RAJA OF SARILA, MR. E. C. BENTHALL, MR. A. H.  
GHUZNAVI, MR. M. R. JAYAKAR, MR. N. M. JOSHI, DR. B. S.  
MOONJE, SIR A. P. PATRO, SIR C. P. RAMASWAMI Aiyer,  
SIR TEJ BAHADUR SAPRU, DR. SHAFAT AHMED KHAN,  
CAPT. SHER MUHAMMAD KHAN, RAO BAHADUR SRINIVASAN,  
SARDAR SAHEB SARDAR UJJAL SINGH, AND MR. ZAFARULLAH  
KHAN.

*Secretaries :* MESSRS. A. LATIFI AND B. RAMA RAU.

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CHAIRMAN—I think we agreed yesterday to start with No. 6 on the Agenda.

SIR MANUBHAI MEHTA—On the point of extradition that we dealt with, I crave your Excellency's permission to say something. There was a little misunderstanding about it between the representatives of Indian States on the one side and the representatives of British India on the other. When I raised the question of extradition, my idea was to make it clear that in spite of federation the present arrangements would continue. Yesterday it was said that the present arrangements would continue and the treaty arrangements would govern the case. Therefore we gave it up. But I was afterwards told that that was not the correct understanding and that in a Federation there would be no extradition between two provinces, and so no extradition between the States and the provinces. If that was the understanding, I submit that the misunderstanding arose because no note was circulated on the subject. To-day I have given to the Secretary a small note and if the question is taken up to-morrow, it will remove this misunderstanding.

MR. JOSHI—I think there was no misunderstanding. I could understand the States' point of view. The States refuse to join the Federation except for particular purposes. Now extradition for criminal or civil cases is not one of the purposes for which they propose to join the Federation. They do not propose to join the Federation for the purpose of civil or criminal law and therefore they cannot take advantage of the formation of the Federation for this purpose. If they want to do so, they must agree to make common civil law and common criminal law; otherwise we cannot agree to the demand which the States are making at present on this point.



MR. JAYAKAR—If Sir Manubhai Mehta wants to raise this question once more, I have no objection for his doing so after we have perused his note, but the point then arises which Mr. Joshi has suggested. Unless there is the same system of criminal law, there will be no transfer of trials from a State to a province or from a province to a State. If the definition of a particular crime is different in a State from the definition in British India, there will be trouble. Therefore, if common rules of extradition are required, there should be common jurisprudence and a common way of defining the several crimes of the Civil and Criminal Procedure Codes and the Penal Code. I have no objection to that question being considered after we have had the benefit of Sir Manubhai's note.

SIR MANUBHAI MEHTA—Up to now no difficulties have been experienced; the treaty arrangements and the extradition law have got on admirably well, and it may be taken for granted that when extradition is sought we have practically to cite the sections in the Indian Penal Code and the Criminal Procedure Code which have to be made applicable to the State for that case.

CHAIRMAN—Is there really any difference between you and Mr. Jayakar?

SIR MANUBHAI MEHTA—There is difference this way: that the present arrangements must continue. At present extradition is possible only in the case of certain offences which are agreed to be extradited under treaties and under the Act; but when there is a complete federation, no such treaty or no such arrangement, it is said, would be necessary.

RAO BAHADUR V. T. KRISHNAMACHARI—I think Mr. Joshi admitted that. When he said that the States have not made extradition a federal subject, he admitted that the existing treaty arrangements must continue.

MR. JOSHI—Yes, the existing arrangements.

RAO BAHADUR V. T. KRISHNAMACHARI—That is all what Sir Manubhai wants.

SIR TEJ BAHADUR SAPRU—The subject of extradition is an extremely technical one and a very difficult one. Before we commit ourselves, we should like to know what is exactly that the Indian States want. Merely because an Indian State may have the same Penal Code as we have or the same Criminal Procedure Code as we have in British India, it does not follow that the person whom they want to be extradited will be surrendered by a magistrate in British India. Under the Indian Extradition Act he has under certain circumstances got to make an enquiry and if a *prima facie* case is not made to his satisfaction, he can decline to surrender the person. Cases like that have happened and, indeed, in some cases High Courts have in recent years gone very much further. If there was a common federation with regard to the law of crimes and procedure, then of course there would be one Federal State and there could be no such thing as extradition in the same State; but if there is no federation in regard to crime and procedure, then we should like to know whether the Indian States are quite content to let the present position continue subject to the old advantages which they fancy they have got under it and subject to all the disadvantages which are inherent in it, or whether even under the present law they are prepared to make any suggestions. If they are prepared to make any suggestions, we should be very willing to consider them. I can quite understand the

position that you do not want any change ; if so, we have nothing more to say. But if you do want any change on the assumption that the law of crime is not going to be federal, please let us have your suggestions before you want us to commit ourselves to anything.

Sir MANUBHAI MEHTA—I have submitted a note.

CHAIRMAN—It would be better to circulate the note, and let us take it up to-morrow.

#### ITEM NO. (6).—DESIRABILITY OF A STATUTORY RAILWAY BOARD.

Mr. ZAFARULLAH KHAN—It was agreed, as Your Excellency has been pleased to observe, that the next item on the Agenda to be discussed should be “Desirability of a Statutory Railway Board.” What I am about to submit in this connection does not amount to saying that that should not be done to-day. I would require a few sentences to explain our position on this subject. As is usual when a new head is taken up, we consult among ourselves as to what should be our position with regard to that item, and in discussing this yesterday afternoon we came to the conclusion that any definite opinion we could submit with regard to this item would depend upon the results of a discussion on item (2) under Head III. We do not want to say that this item, having been fixed for this morning, should be postponed and that item (2) should be taken up, because I realise that Members must have come prepared to discuss item (6), and therefore we do not want to switch on to item (2). But I want to submit that the discussion under item (6) may continue so far as other members are concerned. We shall be very glad to hear their views and when that stage has been reached, Your Excellency might be pleased to take up item (2), having regard also to the very happy fact that all the representatives of the States are here to-day and that the most important aspects of the item concern the States with regard to the Moslem claims. When this has been discussed, we shall be in a position on this side to place on record our views on item (6).

Dr. MOONJE—In regard to that, I have also to make my position clear. Item (2) under Head III is one of the subjects that has been referred to the Prime Minister for this consideration. We shall not be in a position to discuss that subject here until we know what the decision of the Prime Minister is going to be, because it is included in the question which has been referred to the Prime Minister for his consideration.

Mr. ZAFARULLAH KHAN—With regard to what Dr. Moonje has submitted, Your Excellency will realise, as the item is put here, that it is not only with regard to a claim as to the quantum of representation that the question arises. The question has been very rightly included in the Agenda here as it is put, *i.e.*, the means of reconciling a particular claim with another claim or rather another principle, but a majority of the Federal Structure Committee has at any rate accepted that the States should select their own representatives on the Legislature. Suppose that the quantum of representation to be given to the Moslems in the Central legislature is “*x*”—“*x*” may be the determining quantity for the moment or it may not be—but supposing it is “*x*,” how are you going to divide “*x*” between British India and the Moslem States and how are you going to secure that the Moslem States portion of “*x*” is going to be returned? That is the question which has to be discussed in this Committee and we must give all the help that we can to whoever has finally to frame the Bill or the Constitution showing how to put it. Am

I to understand Dr. Moonje to mean that His Majesty's Government, while giving their decision on the Communal question or the Minorities question, will also include another decision on the point as to how this State's portion of "x" as I have put it is to be secured, and if that is so, and the States agree to it, I agree that that need not be discussed.

SIR C. P. RAMASWAMI AIYER—I was going to suggest that this discussion is not likely to take us much further for this reason : if the means of reconciling Muslim demands for one-third of total number of seats is to be construed strictly and assuming that the States now are called upon to say straight away what proportion of Muslim representatives they can be given, they cannot give an answer without knowing what may be called the general scheme which His Majesty's Government or the Prime Minister would adopt with regard to the reconciliation of Muslim and Hindu demands. Let me illustrate it by an example. There are some States with whose affairs I am personally acquainted where no question of Muslim representation would arise at all. There are certain States in South India where the real claim will be of the Christians and not of the Muhammadans, and there are many, many States in which it is not possible to conceive of Muslim representation, so that it is only a few States in Northern India who will really have to discuss this matter. I submit I am speaking subject to correction and subject of course to verification or contradiction by representatives of the States—it would be best from their point of view and from everybody's point of view that this matter should be considered when we know the scheme which the Prime Minister of His Majesty's Government is going to evolve from an All-India point of view.

SIR AKBAR HYDARI—I accept that position so far as I am concerned. I think that just now it is rather premature to discuss it.

RAO BAHADUR V. T. KRISHNAMACHARI—I also agree with Sir C. P. Ramaswami Aiyer that there are so many uncertain factors at the present moment that it will not be possible for the States to deal with the question.

CHAIRMAN—First of all, may I say, with all possible deference to Mr. Zafrullah Khan, I do not quite see how the "Desirability of a Statutory Railway Board" should be connected with this item (2) in any form, and I cannot see where the communal issue comes in. But apart from that, I want to make this observation, and want to make it particularly to the States' representatives. I think it would be extraordinarily helpful to the Prime Minister if we could have a general discussion on this particular matter. But if the position of the Committee is to be that we are to wait until the Prime Minister has given his decision, then it should be clearly understood that no further discussion could be allowed on it. That is the whole point.

SIR MIRZA ISMAIL—Would it not be helping the Prime Minister if we came to some conclusion from this side? So far as I can see this particular matter, the point of view of the States would be that they cannot commit themselves to fix a proportion between Hindu representatives and Muslim representatives. They would insist upon their right to send whom they like and as they like. Whatever method they desire would be adopted. Any other method of asking the States to allot one-third of the federal representation to the Muslims or any other community would simply be impossible of fulfilment. There will be so many practical difficulties in the way that I cannot see how this can be given effect to.

SARDAR SAHIB SARDAR UJJAL SINGH—Besides, this question is intimately connected with the representation of other communities. We cannot discuss it from the point of view of one community without any regard to the claims of other minority communities. The whole question has to be determined together. The question of the quantum of the various minorities has been submitted to the Prime Minister. The whole thing is a minorities question in the first instance, and only after we know the quantum of representation which the various States will get can we discuss as to how representation should be secured from the various States.

Mr. JAYAKAR—According to the wording of the question as stated here, I agree with Sir Akbar Hydari that it is premature, because it is only in the event of the Prime Minister conceding one-third of the total number of seats that the question will arise under that heading. Supposing the Prime Minister does not concede one-third of the total number of seats to the Muslims, this question does not arise at all. If we assume that the Muslims are given one-third by the Prime Minister, then the question arises how to adjust this one-third between British India and the Indian States. So this Committee has nothing to do with it. The question is involved in the main question which has been referred to the Prime Minister; secondly, it will be a matter between Indian States and the Muslim representatives to adjust between themselves.

CHAIRMAN—I think Mr. Zafarullah Khan did say that he was not particular, for the moment at all events, about one-third; he put the figure “x.”

Mr. ZAFARULLAH KHAN—Your Excellency was pleased to put a question to me that in Your Excellency's view it did not appear, at least on the surface, how this item was dependent on item (2). Before I come to deal with it, I might submit that in making up one's mind with regard to the desirability of a Statutory Railway Board it is not only with regard to that one sentence one has to say “yes” or “no.” One has to discuss the constitution of the Railway Board; if it is desirable to have only one Central Board or a sort of Federal Board; questions with regard to recruitment, etc. Even with regard to the desirability of a Statutory Railway Board, the question is whether Railways should continue to be administered by a Minister responsible to the Legislature or whether it should be put on such a basis that with regard to their ordinary work the Legislature would not be able to interfere at all. These questions are intimately connected with the question of the method and the amount of representation the Muslims will have in the Central Legislature—to a certain extent also with other questions—but mainly upon this question would depend our view on some of the questions that will arise for discussion under item (6). With regard to the position that has been taken up by some of the members, I am afraid the difficulty is this: In the first place, this agenda in this form, or rather this item in this form, was put forward at the very first meeting of this Committee as one of the items to be considered by this Committee and not a single objection was raised to its being put in that form on the ground that so long as a decision had not been announced this item could not be discussed or that when the decision had been announced it was a matter for arrangement between the Muslims and Muslim States or Indian States and that this Committee as a Committee was not concerned with it. On that occasion it was accepted as one of the subjects on which the Committee might give its opinion and its advice for consideration when all the questions had been settled. But even leaving that aside, it is

said that in the first place it depends upon whether the Prime Minister accedes to the demand of the Muslims for one-third representation in the Federal Legislature or not. Supposing the Prime Minister said "No; they shall not have one-third representation, they shall have only 30 or 35," does not this question arise exactly in the same way? Take again that 20 per cent. is conceded. Out of that 20 per cent. how many are to be elected from British India, how many are to be selected by the States and how are the States in their selection to adjust all claims, whether the selection shall be entirely free or whether any are to be nominated and so forth? All these questions will arise whether the proportion is 5 per cent., 10 per cent., 15 per cent. or 30 per cent. and advice would have to be given. Now, the position which is taken up with regard to this item after all is this, namely, that unless the decision of His Majesty's Government with regard to the quantum of representation, giving figures is announced, this question can neither be discussed nor can any view be pressed on it. So that, to come back to this position—it is not only the Muslim position but the position of several members of this committee—some of the items included in the Agenda cannot be proceeded with at all till His Majesty's Government have announced their detailed decision upon the minorities question. If that is so, item (2) cannot be discussed and questions that are dependent on item (2) cannot either be discussed or upon them we will not be able to give any opinion in this Committee till the Prime Minister's decision has been announced.

Sir AKBAR HYDARI—I think that the position which the Indian States want to take up in any circumstances is that they do not bind themselves to any communal representation or communal considerations in the selection of their representatives.

Sir AKBAR HYDARI—That being so, the minorities in the provinces must come to some decision about themselves. They now know the position about the Indian States.

Sir MANUBHAI MEHTA—My instructions from His Highness The Maharaja of Bikaner is this—that this question need not be considered by the States on any ground. The question will be taken up before the Princes Chamber at the end of next month when the Princes Chamber will be given an opportunity to discuss it. The conclusions of His Majesty's Government and of this Committee would be facilitated by knowing what is the inclination or what is the determination of the States on this point. Their feeling, Sir, is that this communal question has never entered into the arena of State politics. They do not know what is the Mussulman representation, separate electorates or joint electorates. They are altogether innocent of these differences and to include this question in the States they are perfectly opposed. They would not agree to any such communal or separate representation at all. I know their decided feelings on this point. I am afraid there was no agreement on this point in London. His Highness The Maharaja of Bikaner several times asked this question—if in the Lower Chamber or in the Upper Chamber, representation was to be 20 per cent. or 40 per cent., or any figure, whether that was to be exclusive or whether it would include any special representation of minorities as labour, untouchables or depressed classes. If any such representation was to be given them, the States' quota should be unaffected by any such special representation, and he was given to understand that the States' quota would be quite unaffected by the special representation given to the minorities in the legislature. When that was the understanding, I don't see how the question of one-third representation enters into the consideration of State representation.

Supposing the State representation is 30 or  $33\frac{1}{3}$  per cent.—whatever is decided upon, there is no element of communal representation in this figure. The Hindu States may send Muhammadan representatives or the Muhammadan States may send Hindu representatives. There is nothing to restrain their free choice of people whom they want to nominate. That is my view.

CHAIRMAN—I think we have got the States' views put clearly before us. It is all to the good. But under the circumstances I do not really think there will be any use discussing this question.

Sir A. P. PATRO—Mr. Zafarullah Khan does not want to stop discussion on this item.

Mr. ZAFARULLAH KHAN—I am not objecting to the item being considered and discussion going on item 6. I merely said that, so far as we are concerned, we shall not be able to contribute to it. We shall have to reconsider our position.

Sir MIRZA ISMAIL—We seem to have answered this question of reconciling the Muslim demands.

Mr. ZAFARULLAH KHAN—Though we are rather disappointed, I think that the States' reply is definite, so that we know where we stand.

Sir A. P. PATRO—We know the States' opinion definitely. There is no further question about it.

Mr. N. M. JOSHI—The consideration of that item is finished.

Mr. ZAFARULLAH KHAN—So far as this department is concerned.

Sir MIRZA ISMAIL—The question of Muslim representation should be excluded from any such calculations.

Mr. ZAFARULLAH KHAN—I understand it clearly. For instance, if in any chamber 40 per cent. representation is given to the States, then the proportion of Muslim representation will be out of the balance 60 per cent. and not of the 40 per cent.

RAO BAHADUR V. T. KRISHNAMACHARI—There cannot be any reservation in the States' block.

Mr. N. M. JOSHI—In view of the fact that we are anxious to decide this question at an early date, can we not ask the Prime Minister kindly to let us know his decision quickly?

CHAIRMAN—I may tell you that I have sent a telegram to the Secretary of State with regard to the matter which you wish him to give decision on and I have had no reply from him so far. I do not think that you can possibly expect the Prime Minister—I am talking entirely unofficially—to give a decision on the general question until he has received reports of Lord Lothian's Committee and others. Of course, I shall endeavour to get him to send his decision as quickly as he reasonably can.

Sir TEJ BAHADUR SAPRU—What is to happen in the meantime ?

CHAIRMAN—We are faced with the communal question on almost every point.

Sir TEJ BAHADUR SAPRU—Supposing we discuss the question pending a decision from the Prime Minister, while Mr. Zafarullah Khan and our Muhammadan friends will not object to the discussion going on in regard to these matters they will not be able to make any contribution on their side. Therefore, the position will be this. Whatever decisions that may have been arrived at at the present moment they will be of a tentative character because the Muhammadan view will be absent.

Sir A. P. PATRO—This was the position taken up at the Round Table Conference and at the sub-committee.

Sir TEJ BAHADUR SAPRU—Is it contemplated that we should again re-open those decisions and invite Muhammadan opinion at that time ? If so, it means duplicating the work of this committee because it is just possible that the decisions which may now be arrived at may not be acceptable to our Muslim friends.

CHAIRMAN—I ought to be very sorry if I found that our Muhammadan members were unable to give up their opinions on these matters. After all this is only the Consultative Committee. This is for the information and assistance to the Prime Minister and does not commit either him or us to any particular decision. The mere fact that we give our several views will be extremely helpful to him and that is the purpose, I take it, of this Committee.

Mr. ZAFARULLAH KHAN—So far as the present session of the Committee is concerned this will be the only item on which we will not be able to give our definite views. As regards No. 7, under no contingency, we would expect to have any reservation. We can get along with that item even to-morrow. We shall be able to give our views. Probably item 8 also can be taken up. By the time we meet again the decision of the Prime Minister may be announced. So far as we are concerned, I submit, Your Excellency, that, with all the will in the world, we are trying to push ahead with this Committee's work. We are doing as much as we can to save time and we are giving our opinions wherever we are capable of doing so. But in the item that was discussed now we are bound to give our decision in three or four alternative forms and we feel that none of them may be helpful to the Committee. Take for instance the question of representation or the method of representation.

CHAIRMAN—That may be of help to the Prime Minister. It may be really useful to him to know them.

Sir MIRZA ISMAIL—So far as the States are concerned, it is not open to the Prime Minister to say, I take it, that a certain method of election or selection should be followed in the States.

CHAIRMAN—You have made it perfectly clear.

Mr. ZAFARULLAH KHAN—Supposing for the information of the Prime Minister, we say that our view is such and such provided certain things are so and so. But if we find later on that the provisos are not borne out what will be our position ? We give our view that  $x$  is  $x$  provided

$y$  is  $y$ . If later on it turns out that  $x$  is not  $x$  and  $y$  is something else, what should be our position? Shall the question be reopened so that we might bring an alternative opinion? Or shall we be debarred from giving an opinion? That is the difficulty.

SIR MIRZA ISMAIL—I do not quite appreciate your point of view.

MR. ZAFARULLAH KHAN—I am sorry I do not appreciate yours.

CHAIRMAN—I think we had better go on to No. 6.

MR. N. M. JOSHI—We shall reconsider it, if need be.

MR. ZAFARULLAH KHAN—It will help us to know the views of the different members.

CHAIRMAN—The desirability of a statutory Railway Board.

MR. E. C. BENTHALL—May I just make one or two remarks? In paragraph 2 of Circular No. 5 issued by the Committee Secretariat, it is said "The Constitution of a statutory railway authority does not seem to have been discussed at the first session of the Federal Structure Committee." It is quite true that it was not discussed but our representative, Mr. Gavin Jones, put forward his views very clearly. They are set out very clearly on page 257 of the proceedings. That point was also raised by Lord Reading. It was discussed again in the plenary session when I think Mr. Gavin Jones completed his arguments and suggested that Ports should be added as they are done in South Africa. Then in paragraph 5 of the same circular it is mentioned "The question of a statutory railway authority was not discussed by the Federal Structure Committee at the second session." It was discussed by the Federal Finance Sub-Committee and their provisional views are set out in section 25 of their report on page 49 of the proceedings under the heading "Commercial Departments." The point I wish to make is that although no discussion took place the question had been raised and also regarded as a very important feature of the new federal constitution.

MR. M. R. JAYAKAR—What is the point?

MR. E. C. BENTHALL—The point I wish to raise is that Circular No. 5 is not quite correct. There are one or two inaccuracies in the report which give a wrong impression. The question was discussed but nothing was decided.

MR. N. M. JOSHI—It was fully examined elsewhere.

MR. M. R. JAYAKAR—To what particular paragraph do you refer to?

MR. E. C. BENTHALL—Para. 5.

CHAIRMAN—You are objecting to the statement in the Circular that the constitution of a statutory railway authority has not been discussed either at the first or the second session.

MR. E. C. BENTHALL—It was raised by our representative at the first and discussed at the Federal Finance Sub-Committee at the second session.



SARDAR SAHIB SARDAR UJJAL SINGH—May I point out, Sir, that this question found a place when we were discussing the draft report of the Federal Structure's report says, "The sub-Committee take note of the proposal that a statutory railway authority should be established, and are of opinion that this should be done, if after expert examination this course seems desirable." As a matter of fact, this question of statutory railway authority was never brought before the Federal Structure Committee for discussion and in this connection Mr. Jayakar, Mr. Jinnah and myself pointed it out to the Committee. I beg to read my remarks in this connection which will be found on page 614 of the proceedings of the Federal Structure Committee at its first session—"With regard to statutory authority being established for railways, I feel that the question was not discussed in detail in the Sub-Committee and I was rather astonished to find it given such great prominence in the report." Mr. Jayakar made similar observations, also Mr. Jinnah. Now, Sir, the circular in this connection is not incorrect, and in the second session of the Federal Structure Committee this question was not at all discussed by the Federal Structure Committee that attention was drawn and that reference was made : but I do not think that the note drawn up by Secretary is incorrect.

Mr. M. R. JAYAKAR—With reference to paragraph 5 of the Circular where Mr. Benthall suggests an inaccuracy has crept in, does he suggest that the question of statutory railway authority was discussed by the Federal Structure Committee at the second session ?

Mr. E. C. BENTHALL—To that extent, I am not quite correct.

Mr. M. R. JAYAKAR—It was discussed in the Finance Committee and the note is accurate when it says that the question was not discussed by the Federal Structure Committee.

Sir A. P. PATRO—It is a small point after all.

Mr. E. C. BENTHALL—As a matter of fact I raised the point in my comments on Federal Finance.

Mr. M. R. JAYAKAR—The note is perfectly accurate. The matter was never discussed. It did not form a subject for discussion and it was not discussed in the Federal Structure Committee. An individual member might have raised the point.

Mr. E. C. BENTHALL—I raised it in the course of my speech.

Sir TEJ BAHADUR SAPRU—My recollection is that neither in the first nor in the second session was this question ever open to discussion in the Federal Structure Committee. Indeed, when the first report added the sentence with regard to the railway board, it took some of us by surprise inasmuch as the matter had not been discussed and we pointed it out at the time. At the last session of the Round Table Conference it was perfectly true that one or two members expressed their individual opinions in regard to this matter but there was no exchange of opinions and, among the members themselves, the question, to my mind, is perfectly an open question.

Mr. E. C. BENTHALL—I am not disputing this.

CHAIRMAN—I think we will have no further discussion on this point. The Secretaries are absolved from the blame.

Mr. E. C. BENTHALL—I apologise.

CHAIRMAN—Have you got anything to say with regard to the statutory railway board ?

Sir C. P. RAMASWAMI AIYER—I take it that the term “ Statutory ” is meant to be “ Parliamentary.”

Sir TEJ BAHADUR SAPRU—No.

RAO BAHADUR V. T. KRISHNAMACHARI—Apparently that is what is intended.

CHAIRMAN—I will take the points in their serial order. Para 6 (a)—Should an authority for the administration of railways be set up by Statute ?

Sir C. P. RAMASWAMI AIYER—If by the word “ statutory ” is meant, Your Excellency, “ Parliamentary,” I should have some objection. I am generally in favour of an independent body dealing with certain classes of railways. The general policy, what may be called the country’s policy, shall be laid down by the legislature and this body will carry it out subject to certain over-riding control, the point being that in the administration of railways there should be certain continuity of administration of policy, and the legislature will not from time to time interpose with detailed instructions or with detailed action which might amount to unprofitable interference.

CHAIRMAN—We are dealing with 6 (a) now and you are going to 6 (b).

Sir C. P. RAMASWAMI AIYER—If by statute is meant the statute of the Indian Legislature, I should say “ Yes,” and therefore the authority should be set up by that legislature.

Sir TEJ BAHADUR SAPRU—I am in agreement with what Sir C. P. Ramaswami Aiyer said just now. I would further point out that the subject of railways, for purposes of policy and legislation, has been declared federal at the Round Table Conference which, to my mind, means that the Indian States, if they should come into the federation, will have a direct and effective voice in the legislation and policy of the railways. If that be so, that is, to my mind, an additional argument against the word “ statutory ” being interpreted as “ parliamentary.” While it must be left to the Federal Legislature to set up a board with definite powers and to define the procedure, I for one should like a Board like that set up by the Federal Legislature with all the precautions that had been taken in other constitutions. As we are introducing the Indian States, the position in India is, to my mind, not parallel to the position either in the Dominions or in any other constitution. Considering that the Indian States are coming in—and I do not know whether the States would like the idea of a provision on this point being made by an Act of Parliament without giving them a chance of expressing their views effectively which they would have in the Federation—the opinions of our friends from the Indian States will be very useful.

Sir MIRZA ISMAIL—I agree with the views of Sir C. P. Ramaswami Aiyer.

Sir AKBAR HYDARI—It seems to me that the question has to be analysed and we must make clear to ourselves what was in the minds of

those who wanted a statutory railway authority and in regard to that perhaps we might now come to some final conclusions. It is true that railways, for policy and legislation, have been made federal but the question that had to be dealt with was with regard to the administration of railways which are now in the Indian States but which would continue to be either central or, if the debt was taken over, should become federal. What is the body that would administer that class of railways ? It will be seen that the matter is not really affected by the question that railways have been made federal for policy and legislation.

Sir TEJ BAHADUR SAPRU—Would not administration be in accordance with policy and legislation ?

Sir AKBAR HYDARI—I am coming to that. What is the idea of this statutory railway board ? So far as I can see from the papers that we have, it is admitted that whatever railway board is constituted, the policy and legislation with regard to these railways will continue with the legislature. It is really the question of the management with regard to which we have to decide whether we shall not arm ourselves and ensure that the management in future of the railways will continue to be a commercial undertaking ; and whether it is not desirable that, with respect to the transfer of power to the State that there shall be a statutory authority for the management of railways and that it should be laid down what will be the specific powers which this railway board will have. I am speaking more or less on the analogy of what we had to do in Hyderabad when we took over the railway from the company management.

Mr. N. M. JOSHI—May I just ask one question ? Will the Statutory Railway Board, when established, take over control of the railways which are administered by the Indian States ?

Sir AKBAR HYDARI—No.

Mr. N. M. JOSHI—You are giving us advice as to how British Indian railways are to be managed.

Sir AKBAR HYDARI—I am talking of railways which will have to be decided as federal. Am I to take it that, in this consultative committee, I have no voice on subjects not directly affecting the Indian States ?

Mr. N. M. JOSHI—I do not say that.

Sir AKBAR HYDARI—I am explaining as to how this problem is to be considered. I am simply stating as to what are all the questions which are involved. I want first of all to clear up this point—that simply because railways have been made federal for policy and legislation it does not necessarily mean a postponement of the decision until the Indian States' views have been heard because this relates to the management of railways which are at present administered by the Railway Board in British India and how those railways will continue to be administered in future.

Mr. N. M. JOSHI—There is one more question. He said that the States are going to be responsible for the debts incurred by the British Indian Railways. Does he mean that the States will agree that these debts should also be a charge upon the revenues of the State ?

Sir AKBAR HYDARI—If you would refer to the report of the Federal Finance Committee you will find that the whole question has been examined. It was found that the present debt of India amounts to over 100 crores. The Committee carefully examined as to what were the assets and they came to recommend that those debts were fully covered by the assets which would be made over in case we got the British Indian Railways, so that we have got a very essential interest in arguing that if we are going to take over these assets they should continue to be administered in such a way that the service of the debts will be ensured.

Sir C. P. RAMASWAMI AIYER—May I ask Sir Akbar Hydari to clear one doubt? In the observations which fell from him it was taken for granted that this statutory or legislative authority would have operation only with regard to British Indian Railways. What I am endeavouring to clear my mind about is this: If policy and legislation in regard to railways is to be a federal subject, the working out of, say, freights, rates, etc., in terms of practical details would be inextricably connected with that policy and legislation, and as is well known many, in fact, of the great railway systems run through Indian States as well and therefore the Indian States should be greatly interested in co-operating with reference to matters of general railway administration not in the narrower sense but in the sense in which the administration involves the carrying out of your policy and legislation. I know that over and above the great railway system there are private railway systems in certain Indian States, but it may be that the Indian States require them. What I am anxious to know is whether Sir Akbar Hydari contemplates or does not contemplate that this Railway Board should have an operation throughout the whole of those systems which, for instance, operate both in British India and in Indian States.

Nawab Sir AKBAR HYDARI—I have not yet finished my speech. Please wait and hear me.

Sir C. P. RAMASWAMI AIYER—I beg your pardon.

Nawab Sir AKBAR HYDARI—We have said that the power will be exercised to the extent that the present Railway Board exercises powers and you will remember that no State can run its railways unless they are inspected by the Railway Inspectors. With regard to rates I am going to say that the whole thing must be taken together as a very essential proposal for which we have been asking even independently. If you will allow me to continue, Sir, the Government of India proposals may be divided into two parts—one the Railway Board and the other the Rates Board. With regard to the Railway Board, its functions are more or less the management of State Railways which at present belong to the Government of India and also it has got certain other powers over railways in Indian States. The whole question is what will be the position in the new government with regard to the management of these railways, whether it will be as they are being run at present or whether there can be a proper Railway Board and whether the creation of that Railway Board should be a matter for statute or whether it should be left in future for the Federal Government to decide and if it is a matter for incorporation in the Statute what are the kind of matters which should be provided in that Statute. General Hammond in his memorandum says that this new Board as distinguished from the Rates Board should have powers with regard to expenditure, with regard to labour, and with regard to appointments. I do think and it has been conclusively proved from the

experience of General Hammond and from what was stated from the Government of India's Despatch about railways that it is necessary that there should be some interposition between legislature and the management of some permanent body of control. Paragraph 92 of the memorandum says "It will have been noted that the principle of interposing between the Legislature and the management some permanent body of control, preferably of business men, is a marked feature of most of the modern schemes." Even in Great Britain it has been found necessary gradually to create such a body of Central Transport. I am strongly of opinion that the interests involved in railway administration are so very great and the questions are so complex that it is very necessary to keep the actual management of railways as far as possible above the vortex of politics. For this reason I strongly advocate that it is very necessary that for the conservation of this asset a statutory body should be created.

Sir TEJ BAHADUR SAPRU—By whom ? By Parliament ?

Sir AKBAR HYDARI—The body itself should be created by Parliament, but its details in most cases are to be left to the Federal legislature when it comes into being. What Parliament should provide for is the sort of body. I will tell you what is the point involved in that. There are two kinds of Boards which have been advocated—one is a Board composed of selected more or less technical men, another is a large Board represented by different interests. The first kind of Board would be a Board, as I envisage, where there would be a Minister of Railways in the Federal Government as the President with about five other members, one to represent Transport all of technical men more or less, one to represent the Loco. side, one to represent Civil Engineering and so on. But this Board would consist more or less of technical experts with only two men, one President, who would be the Member for Railways and who would be the liaison officer between this Board and the legislature and perhaps one other member who would represent Finance and one man perhaps who would represent Commerce and Industry.

Sir A. P. PATRO—Sir Akbar Hydari is giving an analysis of the conclusions arrived at by General Hammond in his "Memorandum on the Statutory Control of Railways," but the point we are now considering is :

(a) Should an authority for the administration of railways be set up by Statute ?

(b) If the answer to (a) is in the affirmative should provision be made in the constitution for the establishment of the railway authority by the insertion of a section in the Government of India Act ?

It is interesting to go into details of General Hammond's recommendation but my difficulty in answering this question is enhanced by the fact that General Hammond says that he has no personal knowledge or experience of Indian Railways or of Indian conditions. Much of what Sir Akbar Hydari said seems to be irrelevant.

CHAIRMAN—I think I was to blame to a certain extent. I was very much interested to hear Sir Akbar Hydari's historical analysis of the possibility of a Railway Board. If we are to come down to the particular matters with which we are concerned, I think Patro is right in that respect.

Sir AKBAR HYDARI—But for this analysis there might be confusion of ideas as I found in the case of Sir A. P. Patro's speech. We require technical experts in different branches to constitute such an authority so that they may be able to determine questions that arise in their several departments. That was my whole point. We thought that it would be necessary to have a Board of management for administration to be interposed between the actual day to day administration of the management and the authority which laid down the policy. It was necessary to have an intermediate body of experts so as to ensure that this intermediate body will not be one of experts run mad.

CHAIRMAN—If we can clear point (a) "Should an authority for the administration of railways be set up by Statute" then we can spread ourselves later on.

Sir C. P. RAMASWAMI AIYER—If we take away the words "by Statute" there will be little difficulty.

CHAIRMAN—Can we agree on the main idea that an authority for the administration of railways should be set up? (Agreed.)

Sir MANUBHAI MEHTA—At the Round Table Conference when the question of railways was discussed the States agreed that railways should be classified as federal for policy and legislation and that administration should also be federal to the extent of the powers now exercised by the Railway Board. These powers include the power of sanctioning new construction of a line in an Indian State and secondly the power of laying down the maxima and minima fares to which every railway in an Indian State has also to be subjected. The third power is the power of inspection for the purpose of securing safety. These three powers which we had agreed are now exercised by the Railway Board and if the Railway Board is to be substituted by a new Board we will have no objection to these three powers being exercised by the new Board over the railways in Indian States. I welcome some of the suggestions made in this new memorandum that the duty or task or function of fixing the rates and fares will be transferred from the Board and will be entrusted to an independent Tribunal called the Rates Tribunal. Indian States naturally welcome this suggestion of transferring rates and fares to an independent Tribunal because sometimes occasions have arisen where Indian States have not been satisfied with the decisions of the Railway Board as regards rates and fares. So if the question is transferred to an independent Rates Tribunal they would welcome the suggestion. Then remains the question of the new Board which would have as members people elected by bodies representative of Commerce, Industry, Railways, etc., called the commercial body between Government which will lay down policy and legislation and the actual management. I beg to add that Indian States would expect some representative of Indian States to be nominated to that Board. That is a new suggestion I wish to make. With these few words I agree with Sir Akbar Hydari.

CHAIRMAN—Are you agreed with regard to (a)?

Mr. N. M. JOSHI—My reply to that question will depend upon the character of the Board to be set up. If we agree to the constitution of the Board, then I shall have no objection to a Board being set up. If the Board is a representative one, I shall agree. If not, I cannot agree. I am making these remarks because it has been taken for granted in the speeches of Sir Akbar Hydari and Sir Manubhai Mehta that I do agree to that proposition. In the first place the Indian railways are not the property

of these commercial men. British Indian railways which are to be managed are the property of the British Indian people and not of the commercial men. Therefore those British Indian people who have invested their money in these railways must be represented and not the commercial men. Secondly if there is to be a representation of the commercial men who provide goods to be carried by railways there is a vast number of railway passengers who also provide revenue to the railways. They must also be represented on this Board. Therefore if the representation of different interests on this Board is properly adjusted, then only I can agree to the formation of a Board for the management of railways, otherwise the power must rest with the Legislature. One word more, Sir. The question of Statutory Board has been raised. The real question is this.

Dr. B. S. MOONJE—Don't you think that the question which Mr. Joshi is dealing with at present is the function of the Board ?

Mr. N. M. JOSHI—I am not dealing with the functions of the Board. I shall agree if the Board is a representative one. I am not going into the details of the constitution.

CHAIRMAN—Can't you agree to a general principle and then provide the best possible Board to administer railway affairs.

Mr. N. M. JOSHI—I am not discussing details. I am pointing out that if the Board is a representative one then I shall agree for the reasons I have given because the railways are the property of the Indian people and that property is at present being managed by Government under the guidance and control of the Legislatures by setting up a Board. We are thinking of depriving the Legislatures of that power. That is the object of the board.

Dr. B. S. MOONJE—We are not deciding at present that the Board should be appointed by Parliament or by Federal Legislature. We are only considering whether there should be a Board or not.

Mr. N. M. JOSHI—I am quite prepared to take up my point later on. It should not be understood when the question comes for the appointment of the Board that I did not raise my voice against the appointment of the Board.

CHAIRMAN—That is a most reasonable statement I think. We are agreeing that a Railway Board should be created. The word "Statute" goes out ? (Agreed.) Now we go on to (b).

Sir C. P. RAMASWAMI Aiyer—May I say a few words on that? Bearing in mind all that has fallen from Sir Manubhai Mehta and Sir Akbar Hydari and also bearing in mind that the present position is as follows I suggest for the consideration of the representatives of Indian States that the Railway Board as now constituted by the Government of India exercises a certain amount of direction and advisory control over the Indian States Railways also. It would be in the highest degree expedient that this railway authority, on the formation of which we are agreed, should be set up by an Act of the Federal Legislature, in which Act, in the formulation of which Act, and in the framing of rules *ex cathedra* of which Act the Indian States will also play a great part. If it is a Parliamentary Statute as contemplated by Sir Akbar Hydari, then practical difficulties will arise as to whether that Parliamentary Act *ipso facto*

does not apply to Indian States. Then there would be the difficulty of the applicability or non-applicability of treaties and conventions. It is therefore far better to have an Act of the Federal Legislature.

Mr. E. C. BENTHALL—Would there be any objection to laying down general principles ?

Sir C. P. RAMASWAMI AIYER—Parliamentary draftsmen object to that.

Mr. E. C. BENTHALL—Would there be any objection to defining the nature and functions of the Railway Board on the lines of the South African constitution ?

Sir C. P. RAMASWAMI AIYER—After all if we are agreed that is part of the Federation there should be a railway authority for the purpose of this very interesting question raised by Mr. Joshi. His voice and the voice of Indian States will be heard. On the whole my submission to your Excellency is that it would be better to have an Act of the Federal Legislature.

Mr. E. C. BENTHALL—My submission is that the general outline should be laid down in the Act on the lines of the South African Act.

Sir C. P. RAMASWAMI AIYER—South Africa has no Indian States.

Mr. E. C. BENTHALL—But there is nothing in the Indian States taking part in the drafting of the rules.

Mr. M. R. JAYAKAR—May I ask Mr. Benthall what he means by “general principles” ? Does he mean functions, powers and composition of the Board ?

Mr. E. C. BENTHALL—The details to be settled afterwards.

Sir AKBAR HYDARI—We think that there should be provision in the Constitution Act for the establishment of a railway authority for the administration of railways. Then the details and rules would be worked out afterwards when the Federal Legislature has been set up. In other words the Constitution Act should provide that there shall be a railway authority for such and such purpose.

Sir TEJ BAHADUR SAPRU—May I be permitted to point out to Mr. Benthall that the South African model will not serve the purpose.

Mr. E. C. BENTHALL—I am quite in agreement with that policy.

Sir TEJ BAHADUR SAPRU—Ever since the Constitution has been put into force there has been dispute as to the position of the Board of Commissioners. The Act laid down that the control and management should be exercised ‘through’ the Board. The Government interpreted this as meaning that the Board was to be an advisory body, while the Board considered that the intention of the words was to make them directly responsible to Parliament. The point was finally settled by the Railway Board Act of 1916, which stated clearly that the Board was only to advise the Minister, and, though the Minister had to consult the Board, he could depart from their advice, the only check being that in



that event he had to record his reasons for so doing and these would be reported to the next meeting of the Board and recorded in the Minutes.

It is clear this Act also gave the Minister a casting vote which he had not before. It is clear from the reading of the S. African Act 1909 that it is quite a departure from the object of the framers of the Act.

Mr. JAYAKAR—In paragraph 22 a criticism of the S. African Act appears. Criticisms have frequently been made of their administration and it is not a sound policy for us to adopt, and it certainly cannot be said that it has been free from all political interference. There is no single instance where payments have been made from the consolidated revenue fund to the railways on account of services given at less than the cost of working branch lines. In the next paragraph it is stated that if any success has been achieved it is not due to the constitution but it is due to the presence which is quite accidental of wrong personalities. One can say with perfect accuracy that the model of South Africa has not been a success even in South Africa where there is no States problem.

Mr. BENTHALL—I am in entire agreement with the last two speakers. But when I suggested the model of South Africa I did not mean that we should wholly adopt it I only meant we should adopt the general model for our purpose. In my opinion the difficulties which have been raised should be overcome by changing the words 'through the Railway Board' to 'by the Railway Board.'

Sir A. P. PATRO—But what is your difficulty if the Federal Legislature passes such an act after an expert committee sat in order to decide functions, etc. Why should you want a guarantee that the statute should provide for a railway board. If I know your difficulty then I will be able to meet you.

NAWAB Sir MD. AKBAR HYDARI—Then we are agreed that the constitution Act should provide, 'There shall be a railway Board.'

SARDAR SAHIB SARDAR UJJAL SINGH—The clause in the constitution should only provide that there shall be a railway authority.

Sir C. P. RAMASWAMI AIYER—It will also provide that there shall also be a Railway Board. But what the composition, functions and powers of the board will be settled by the federal legislature.

NAWAB Sir MD. AKBAR HYDARI—It now remains to consider whether that board will be a managing board or an advisory board.

Mr. BENTHALL—I think we should lay down the nature of the board, whether it should be a technical board, or whether it should have commercial representatives on it.

Sir C. P. RAMASWAMI AIYER—May I appeal to you not to start this discussion, because in this Consultative Committee we cannot finally decide or make an approach to deciding the exact functions of the board, etc. To lay down that it shall be an advisory board may tie up our hands later, and it may not be possible to make it an executive board. It will involve the question of composition, and there will be differences of opinion. But if the Federal Legislature passes an act all the elements including the States will have had a share in shaping it, and the board will be suitable in every way.

NAWAB Sir MD. AKBAR HYDARI—It has got a very intimate connection with the constitution, this question whether railways will be managed commercially or whether they will be entirely subject to the Indian Legislature.

Sir A. P. PATRO—The first aspect was discussed in the despatch of the Government of India. In para. 196 Government of India clearly say “Before any scheme for the establishment of a statutory authority to administer railways is adopted, it would be necessary that Indian opinion should have full opportunity of expression and any commission or committee which may be set up to consider the question should of course include representatives of Indian opinion as well as men with financial and railway experience.” We have not got that. Therefore you cannot put in any details in the statute.

NAWAB Sir MD. AKBAR HYDARI—I submit it is very necessary in the interests of the future constitution that we should decide first there shall be a railway board; second, whether that board will be constituted of experts or whether it will be constituted of a large number of people including representatives of the legislature or not; third, whether it shall be an administrative body or whether it ought to be a purely advisory body; fourth, what will be its function so far as revenue is concerned, whether it will be managed with a view to earning a certain amount of revenue for the service of the debt which is placed against it or not.

Sir TEJ BAHADUR SAPRU—I take it that the underlying assumption of Sir Akbar Hydari is that it is not at all likely that the Federal Legislature of the future will bear in mind these very wholesome and salutary principles. I see no justification at all for proceeding on that assumption.

Mr. JAYAKAR—May I further point out that if the railways are to be developed they must be developed according to the needs which will show themselves from period to period and from place to place.

NAWAB Sir MD. AKBAR HYDARI—The creation of this body will not interfere with the full discussion of the legislature as regards these points

Sir TEJ BAHADUR SAPRU—I should like the railway lines in India to be run on absolutely commercial lines and on sound lines. But I should not like to deprive the Indian legislature of their say in the matter of policy and administration and start with the assumption that we are not going to administer our railways on sound lines.

Mr. BENTHALL—The South African model does not prohibit the Legislature in any way.

Sir TEJ BAHADUR SAPRU—Your South African model is the last thing which I will put in the constitution having regard to the position in India. I do say very strongly that we cannot draw any parallel considering the fact that the Indian States are coming in. If you want to exercise some sort of control in matters of policy and legislation over the Indian States, don't think we shall be playing the game, so far as the States are concerned, if we tell them, “You must submit to the principles which are laid down in an Act in the framing of which you have had no voice.”

Sir MANUBHAI MEHTA—We would prefer that the question should be left to the Indian Legislature, in which we will have some voice.

CHAIRMAN—Speaking for myself I do agree with that entirely. But it does seem that in some quarters there is a want of confidence in the future legislature. I think these details should be a matter for the Federal Legislature.

Mr. BENTHALL—I have no objection to that at all so far as the details are concerned. At the Round Table Conference it was agreed that an expert committee should sit and settle these details. All I want is that in the statute there should be a provision for a statutory railway board which shall be charged with the administration of railways as a whole, its composition and policy.

Mr. JAYAKAR—If you merely want in the statute a provision that there shall be a railway board for the administration of railway matters, I have no objection, but I do not see much purpose in it. If on the other hand you are going to say anything about its constitution, composition or functions, then I submit I cannot agree.

NAWAB SIR MD. AKBAR HYDARI—I agree to the functions *re* being laid down by the Federal Legislature.

Mr. JAYAKAR—If this be left to the Federal Legislature I have no objection.

Mr. BENTHALL—I will go a little bit further, I desire that a certain number of these subjects should be dealt with by us, and we should make our recommendations. But in this Committee I can see I do not get good support.

NAWAB SIR MD. AKBAR HYDARI—Apparently nobody except myself and Mr. Benthall seems to support that view. I would appeal to my British Indian friends of this Committee and tell them that we shall be able to discuss this question in a much better and more practical and statesmanlike atmosphere than later on.

Mr. JOSHI—We in return will appeal to you and tell you that if the State railways are included we will consider.

Mr. JAYAKAR—Even then it is unnecessary to waste our time on these questions.

Mr. BENTHALL—There is another question which arises: that in certain respects Parliament will still wish to retain certain powers as regards the railways.

Mr. JAYAKAR—All that will be considered by the Federal Legislature.

Mr. BENTHALL—Surely Parliament will have to decide what powers will reside in them and what powers will be given to the railways.

SARDAR SAHIB SARDAR UJJAL SINGH—We will discuss that later on.

NAWAB SIR MD. AKBAR HYDARI—I should also like a provision in the constitution for the establishment of an independent rates tribunal. It is not a question of detail. That body is really more important to the States than even a railway board.

SARDAR SAHIB SARDAR UJJAL SINGH—We have agreed that an expert enquiry will have to be made before that Board is set up.

NAWAB Sir MD. AKBAR HYDARI—It is an independent rates tribunal.

SARDAR SAHIB SARDAR UJJAL SINGH—It is part of the whole railway administration. The expert committee will consider various schemes prevalent in various countries and then will put up an agreed scheme, which the Federal Legislature will consider. That scheme will certainly include such a tribunal or some other body.

Mr. JAYAKAR—The Government of India themselves say in paragraph 195 : “ It will be obvious it would be impossible to devise a satisfactory scheme of administration without a detailed enquiry by a committee or commission.” I would refer you to what Sir Patro said in this connection and think that unless an enquiry is made and details are furnished, we cannot commit ourselves to anything like a tribunal. We should also know exactly how it will affect the States.

Sir C. P. RAMASWAMI AIYER—In this matter I am inclined to agree with Sir Akbar Hydari. There should be a railway rates tribunal. Every country has such a tribunal. Its functions are quite different from those of a statutory or legislative railway board, and at no time can I conceive of such duties being performed otherwise than by a body of independent experts of the highest integrity. There are many matters of extreme delicacy and complexity which come up before railway rates tribunals. After laying down that a railway board should be constituted, it should be laid down that an independent body for the purpose of dealing with railway rates should be appointed. I grant again that their composition, functions and powers should be determined by the Federal Legislature. I am perfectly willing to do that, but that there should be a body of that kind there can be no gainsaying. There are questions, I know, questions of great complexity which will arise between States and British India and between various provinces, and I am looking forward to a situation in the federation when such a body will be necessary.

Sir A. P. PATRO—The question should be left open till the expert committee has reported. We are anticipating too much now.

CHAIRMAN—Can we take (b) to read like this :

Provision should be made in the constitution for the establishment of a railway authority to the insertion of a section in the Government of India Act.

An expert committee will have to be appointed to work out details and draft rule.

Sir A. P. PATRO—For the approval of the Federal Legislature.

Mr. JAYAKAR—I should like to make my position clear in regard to clause (b). I am quite agreeable that there should be some provision in the Government of India Act that there shall be a railway board for the administration of railway matters established by the Federal Legislature but it should be made clear in the language of the section that the constitution, functions and powers of the board are left to be determined by the Federal Legislature. That should be made clear to the draftsmen. The wording as it is, if we accept it, is likely to give trouble.

Sir TEJ BAHADUR SAPRU—I agree with Mr. Jayakar.

SARDAR SAHIB SARDAR UJJAL SINGH—I also agree.

Mr. BENTHALL—I will still say the main principles should be included in the Government of India Act. But I am in a minority.

NAWAB Sir MD. AKBAR HYDARI—I am also in a minority.

CHAIRMAN—Do you refer to (c) and (d) of para. 4 in Circular No. 5 ? Is that what you are really getting at ?

Mr. BENTHALL—Yes. I am thinking for instance of this : Railway finances should be effectively separated from general finances. 4 (a) this follows the recommendation of the Acworth Committee which has only been partially implemented. It is the general practice to include such principles. This committee ought to consider and decide which of these principles should be embodied in the Act.

Sir MANUBHAI MEHTA—(b) might be made more explicit by saying a railway board and a fares and rates tribunal : a railway authority is rather very vague. We would lay emphasis on both these.

Mr. JAYAKAR—I have agreed to a section mentioning railway board, but I should like to wait until the expert committee determines the facts before I decide upon having the rates tribunal, as part of the constitution.

Sir MANUBHAI MEHTA—It is equally important.

Sir MIRZA MOHD. ISMAIL—You must have an independent rates tribunal.

NAWAB Sir MD. AKBAR HYDARI—The definite proposal, so far as Mr. Benthall and I are concerned, is in terms of part 4 (a) to (f) except that with regard to the board under (e) ; all the portion except the first sentence should be deleted ; that is, what the board should be. How it should be constituted might be left for the future. But otherwise the concrete proposal is that the Act should provide for what has been put down from 4 (a) to (f).

Sir C. P. RAMASWAMI AIYER—You mean the Parliamentary Act should provide instructions to the federal legislature that they should provide in their Act for these things, that is practically what it comes to.

NAWAB Sir MD. AKBAR HYDARI—That the act must provide for these.

Mr. N. M. JOSHI—If what he says is that the Act should only lay down that a Railway Board should be provided for therein, it is a matter to be considered. If you want details of these matters to be put down we cannot consider them.

Sir C. P. RAMASWAMI AIYER—Even from the point of view of Sir Akbar I think it would be wise not to issue instructions now to the federal legislature of the future that they should do this and that. You are likely to raise opposition that way.

Sir MANUBHAI MEHTA—The tribunal should consist of 5 members—that is too much to say.

Mr. BENTHALL—There is no objection to it in South Africa.

Sir C. P. RAMASWAMI AIYER—If I know anything of legislature they would resent it.

Mr. JAYAKAR—There is again the same assumption which Sir Tej referred to, that the federal legislature of the future will not provide for these matters. I see no reason for assuming that.

Mr. V. T. KRISHNAMACHARI—Would the Parliamentary Act mention a tribunal for rates and fares generally without specifying anything ?

Sir A. P. PATRO—It will refer to a board.

Mr. V. T. KRISHNAMACHARI—Would it affirm the principle of an independent rates tribunal ?

Mr. BENTHALL—I think it ought to.

Mr. JAYAKAR—What is meant by affirming the principle.

Mr. V. T. KRISHNAMACHARI—Refer to the establishment of a fares and rates tribunal in the same way as you have suggested that the Parliamentary Act should refer to the appointment of a railway board.

Mr. JAYAKAR—I want to know whether that will deprive the federal legislature, if it so determined, of its right to decide not to have a rates tribunal.

Mr. V. T. KRISHNAMACHARI—Of course it will.

Mr. JAYAKAR—It will be obligatory on the future legislature to appoint a tribunal.

Mr. V. T. KRISHNAMACHARI—That is my point ; it should be obligatory on the federal legislature to constitute a tribunal because the States feel very strongly that there ought to be one.

Sir C. P. RAMASWAMI AIYER—Having had something to do with the Railway Rates Tribunal which is now in existence, I have prepared cases for them, I know most important questions arise between province and province, for instance, between Bombay and Madras *re* Cotton, and as in the future provinces will be autonomous these questions are sure to arise, and it seems to me that an independent tribunal of that kind would doubtless be as important as the other board we are thinking of.

Mr. V. T. KRISHNAMACHARI—If that is the general feeling we can perhaps put it in the Parliamentary Act.

Sir A. P. PATRO—We cannot agree.

Mr. JAYAKAR—I entirely agree it is impossible to get on with an independent rates tribunal. I am not against it. My difficulty is this. I want to wait till the expert committee gives me the necessary facts.

Sir C. P. RAMASWAMI AIYER—At the present moment, notwithstanding the constitution of the central government to-day, it has been found

necessary to have a Railway Rates Tribunal whose jurisdiction, however, is not very wide. It has been found essential to keep it even in these days of retrenchment.

Sir A. P. PATRO—May I know how many cases come before the Tribunal for adjudication ?

Sir C. P. RAMASWAMI AIYER—I will not go into details.

Sir A. P. PATRO—There have been only two cases.

Mr. BENTHALL—That body, as it is constituted, has not sufficient powers.

Mr. V. T. KRISHNAMACHARI—The present constitution of the Board is responsible for it.

Mr. BENTHALL—It is only an advisory committee. On each case the Railway Board gives the decision. The Committee only goes into matters referred to it by the Railway Board, and it cannot in the nature of things be important.

Sir A. P. PATRO—No cases have arisen.

Sir C. P. RAMASWAMI AIYER—I have prepared six cases.

Sir A. P. PATRO—In the course of 10 years.

CHAIRMAN—I am not sure whether we shall get very much further. We have had a very interesting discussion. I think it will be best to put down the various points of view and leave it there.

Mr. JAYAKAR—On the first question it may be mentioned that excepting two members all are agreed that there shall be a railway board for the management of railways. As regards (b) we are not totally agreed.

Sir A. P. PATRO—The constitution, functions, etc., should be decided by the federal legislature.

Dr. SHAFAT AHMED KHAN—We have reserved our opinion on this point.

NAWAB Sir MD. AKBAR HYDARI—What about an independent rates tribunal ? Is that agreed to ?

Sir A. P. PATRO—Not on this side.

Mr. BENTHALL—I am for it.

Mr. V. T. KRISHNAMACHARI—I think Sir Tej agreed to this being mentioned.

Sir TEJ BAHADUR SAPRU—So far as the Railway Board is concerned we agree with Sir C. P. Ramaswami Aiyer. We are prepared to accept the mention of a railway board. I see no objection to that. But I would not have the Act of Parliament define functions, etc., I would leave it all to the federal legislature.

Mr. V. T. KRISHNAMACHARI—That is not proposed at this juncture.

Sir A. P. PATRO—There are two views.

Sir MIRZA MOHD. ISMAIL—The States attach great importance to the rates tribunal.

Sir A. P. PATRO—We must have to adhere to our point of view.

Mr. BENTHALL—So far as the Rates Tribunal is concerned, would you agree just to say that its Chairman shall be a judicial officer, because it is a very important matter ?

Sir C. P. RAMASWAMI AIYER—As a matter of fact, I do not conceive that any other circumstance is likely, because in most countries where there has been a Rates Tribunal the Chairman has been a judicial officer of high repute.

CHAIRMAN—I think we are agreed generally as to what should be the constitution and the general organisation of the future Railway Board. The other side want it to be left to the federal legislature. Now, can we get on to (c) ?

Sir TEJ BAHADUR SAPRU—So far as it relates to defence, I think we can easily adopt the model of Article 96 to be found in the German Constitution which I may read :—

“ All railways including those not serving for general traffic must comply with the requirements of the Reich as to the use of the railways for the purpose of State defence.”

That should be, in my opinion, a part of the Constitution. It should be open to the Government or to the Governor General to make use of these railways, whenever it may be necessary, for the movement of troops offered for defence. But I do not commit myself to anything more in clause (c), for instance, finance, etc. I do not commit myself to finance, and certainly not to “ etc.”

Sir AKBAR HYDARI—Finance is very important.

Sir C. P. RAMASWAMI AIYER—What is the meaning of “ etc.” ?

Sir MANUBHAI MEHTA—It includes Services and the Anglo-Indian community.

Sir A. P. PATRO—It is stated in the Government of India despatch.

Sir TEJ BAHADUR SAPRU—I may say that I am speaking particularly about defence, because so far back as 1918, when Mr. Montagu came out to India, there was a private conference, at which Mr. Montagu, Lord Chelmsford and some of us were present, and this very question was raised at that time. Both Lord Chelmsford and Mr. Montagu expressed anxiety that whatever might be the future constitution of India, the Government of India should have the power to requisition railways for purposes of defence. I remember Pandit Motilal Nehru and several others were present ; now that I recollect it, Sir C. P. Ramaswami Aiyer was also there. We all agreed on this matter. So that I am very anxious that the Governor General should have the power to commandeer railways for purposes of defence.



Mr. JAYAKAR—I want to make one position clear ; it is likely to be misunderstood. What Sir Tej Bahadur Sapru means by defence is the limited proposal to commandeer the railways, to be found in the German Constitution. He does not mean what the Government of India mean in their despatch in paragraph 192.

Sir TEJ BAHADUR SAPRU—I may add “ in the sense of article 96.”

Mr. JAYAKAR—Because the Government of India in their paragraph 192 under the head “ Defence ” include many other powers to which Sir Tej Bahadur Sapru does not agree ; for instance at the top of page 169 they refer to “ the adequacy of the equipment of the lines and of their standard of maintenance and as to the efficiency of the traffic arrangements.” He does not agree to all that. Therefore, it should be made clear in using the word “ defence ” that what Sir Tej Bahadur Sapru means is the section in the German Constitution which is limited to making use of the railways at the time of war or a national emergency. Is that not so ?

Sir TEJ BAHADUR SAPRU—That is so.

Sir AKBAR HYDARI—I should like to read this sentence in full in the Government of India’s despatch about defence :

“ It is not only the strategic lines on the frontier which are in question, but also the main trunk lines throughout India . . . ”

I suppose strategic lines they would reserve.

Sir TEJ BAHADUR SAPRU—The Governor General shall be competent to commandeer any railway line in time of necessity.

Sir AKBAR HYDARI—Have they not to say whether the railways are kept in such a position that they can be commandeered ?

Sir TEJ BAHADUR SAPRU—That will be seen to by the Railway Board, for it is coming into existence.

Sir AKBAR HYDARI—It is especially strategic lines with regard to which they will have to specify about the standard of maintenance.

Mr. BENTHALL—It is a very important point.

Sir TEJ BAHADUR SAPRU—We can leave it to the Railway Board. After all the Governor General will not be dissociated from the Government. The Governor General will have considerable powers.

Sir A. P. PATRO—May I suggest that how far this defence, finance, etc., safeguards are necessary may be left to the Expert Committee ? It is not possible for us to go into them.

Sir TEJ BAHADUR SAPRU—I should use the word “ defence ” and leave it there.

Sir AKBAR HYDARI—But if you put “ defence ” merely specifying that you would commandeer railways in times of war, it would be a very difficult position.

Sir C. P. RAMASWAMI AIYER—Is there no distinction between strategic railways and the main lines ? The former are maintained in a certain condition for a certain purpose and they will be inspected by the agencies which we are going to create. You ought not to make it incumbent upon every railway which is not a strategic line to keep the same standard. After all, what is the Railway Board inspection for ?

Sir AKBAR HYDARI—It is not merely inspection but also policy with regard to trunk lines.

Sir C. P. RAMASWAMI AIYER—That would mean parliamentary jurisdiction on the part of the Crown.

Sir TEJ BAHADUR SAPRU—What Sir Akbar Hydari means is that there is likely to be conflict between the Governor General and the Legislature, and we do not want that conflict.

Mr. JOSHI—I think the power of the Governor General, as a safeguard, should be defined in the words mentioned by Sir Tej Bahadur Sapru, namely that you will be able to commandeer railways in times of national emergency, and nothing more.

Mr. JAYAKAR—I agree to having a special power for the Governor General to commandeer railways in times of war or similar national emergency, but I do not agree to the other proposals made in the Government of India despatch under the heading “Defence.”

Sir TEJ BAHADUR SAPRU—That is also my position.

Mr. BENTHALL—I am afraid I support them, but what they are I am not clear. As regards the other points, *e.g.*, finance, services and the Anglo-Indian community, these do not seem to me to come under this heading, but under financial safeguards and they can be discussed there.

Sir AKBAR HYDARI—Along with defence, the safeguards must be mentioned.

Sir C. P. RAMASWAMI AIYER—It is not Sir Akbar Hydari's intention to have any hard and fast rules about finance which will make the position difficult. Does he realise now the state of the railway finances and where the instructions of the Acworth Committee are to-day at this moment ?

Sir AKBAR HYDARI—I am fully aware of it.

CHAIRMAN—I am not sure I quite agree with Sir Tej Bahadur Sapru about defence. I am not sure that there ought not to be some definite assurance that the lines will be kept in proper order.

Sir A. P. PATRO—Therefore I said we are all laymen here and we do not know the technical necessities ; we would leave it to the expert committee to say what financial guarantees would be necessary and to what extent.

Mr. JOSHI—This is a constitutional matter, I do not think any expert Committee can tell us what powers we should give to the Governor General.

Sir A. P. PATRO—We are going to have an expert committee in connection with federal legislation.

Mr. JOSHI—This relates to the power to be reserved to the Governor General.

CHAIRMAN—But the safeguards are going to be worked out by the experts committee, are they ?

Sir C. P. RAMASWAMI AIYER—There is one way of dealing with this matter. Supposing the Governor General lays down a standard for a line which is not a strategic line, which is above the normal standard required for the ordinary working of the line, it is just possible that the difference between the standard of the Governor General and the ordinary standard of that line could be put on the Army estimates. Otherwise it would be very difficult in the future to have the Governor General lay down standards for all railways equal to those of the strategic lines. Won't that create very great difficulties ? It may be that other railways may become non-paying propositions as standards may be exacted of them which may be required ultimately only in times of great emergency. These are questions to be considered and to and to that extent I am in agreement with Sir A. P. Patro that these questions, whether the standards now maintained are such that if there is not falling off in them the railways would be used for purposes of defence, may be investigated by experts.

Mr. JOSHI—We would be putting too great a strain on the Governor General to ask him to determine, as the sole authority in India, whether certain standards are maintained or not.

CHAIRMAN—It would be found rather difficult.

SARDAR SAHIB SARDAR UJJAL SINGH—Who will determine those standards ? Will the Governor General employ separate staffs or decide through the Railway Board ?

CHAIRMAN—I may have some authority for defence and my Army Commander-in-Chief may say, “ look here, these strategic railways are not your concern.” My parliament may say that is ridiculous. I feel that one or the other should be in authority.

Mr. JAYAKAR—You can always speak to the Railway Member and have the thing done through him.

Mr. BENTHALL—He may say “ Sorry, I have no money.”

RAO BAHADUR V. T. KRISHNAMACHARI—Parliament may not sanction it.

Mr. JOSHI—If any power is left to the Governor General to decide the efficiency of railways, it will lead to constitutional conflicts.

Sir A. P. PATRO—We want to get out of the Parliament as much as possible.

SARDAR SAHIB SARDAR UJJAL SINGH—Why should there be any apprehension with regard to ordinary trunk lines ? One can well understand apprehension with regard to strategic lines, because they may not be

paying lines and the Governor General may like to see that certain standards are kept up. But there ought to be no difficulty with regard to ordinary trunk lines, so special provision may be made with regard to strategic lines only.

Mr. BENTHALL—How can you get your stores as before if the railways are not in good condition up to the point you reach the strategic line ?

SARDAR SAHIB SARDAR UJJAL SINGH—With regard to the ordinary lines, it would be the business of the Railway Board to see that they are maintained to proper standards.

Sir A. P. PATRO—The safety is certified by the Railway Board through their Inspectors.

Mr. BENTHALL—There may not be enough wagons.

Sir A. P. PATRO—That is a different question ; it is a question of money.

CHAIRMAN—The only thing I am anxious is to treat both alike.

Mr. JOSHI—It is difficult to define a strategic line. Strategic lines were built originally and when later trade developed, they became commercial lines.

Sir C. P. RAMASWAMI AIYER—Whatever the history of the strategic lines may be, we know what are the lines necessary for ensuring defence during moments of crisis.

Dr. MOONJE—I think there should be some reservation of power to the Governor General in regard to strategic lines ; there is no question of that.

Sir TEJ BAHADUR SAPRU—Suppose we had a rule provided in regard to strategic lines—to be determined in future—that the Governor General shall be entitled to lay down certain minimum standards ?

CHAIRMAN—The necessary standards : That would suit me.

Dr. MOONJE—The strategic lines would have to be defined.

Sir C. P. RAMASWAMI AIYER—I do not think your control of the strategic lines by itself is going to be quite sufficient, because, assuming there is going to be a national emergency, stores and munitions may have to be taken to the point where the ordinary lines join the strategic lines, and suppose there is a breakdown as indeed happened in the Great War in one or two centres.

Mr. JAYAKAR—In order to make it effective, as Sir C. P. Ramaswami Aiyer says, you will have to give similar power to the Governor General over all the lines which communicate with the strategic lines. That means you set up a conflict between the Governor General on the one side and Railway Minister on the other.

Sir AKBAR HYDARI—I should adopt the phraseology in the Government of India's despatch.

Sir C. P. RAMASWAMI AIYER—What I am anxious is that some consultation between the Governor General on the one hand and the Railway Member on the other should be secured in regard to these matters without giving rise to conflicts.

CHAIRMAN—I am inclined to think here again we had better give our different views and leave it to the decision of His Majesty's Government.

Dr. MOONJE—"Defence" as given in the Government of India despatch refers to both strategic and trunk lines.

CHAIRMAN—Sir C. P. Ramaswami Aiyer has made it clear that it would not be only strategic lines.

Sir C. P. RAMASWAMI AIYER—In real emergency it would not be possible to differentiate.

CHAIRMAN—There are other members who wish to put in what the Government of India despatch says.

SARDAR SAHIB SARDAR UJJAL SINGH—How many members? Let us see how many are there.

Mr. JAYAKAR—I think the majority are inclined to limit it to the suggestion made by Sir Tej Bahadur Sapru, of commandeering the lines.

Sir AKBAR HYDARI—It is not a question of majority or minority, but of different views.

CHAIRMAN—And finance should go?

Sir AKBAR HYDARI—I say it should remain. In the interests of British India itself, finance should definitely remain.

Mr. BENTHALL—I should support it. I do not think this is the time to discuss it. It comes under financial safeguards.

Mr. JAYAKAR—On a point of procedure, without using the word majority or minority, there ought to be some indication to the draftsman as to the quantum of opinion held on two sides. There ought to be some indication as to what the prevailing opinion in this Committee was.

Sir A. P. PATRO—I think it is safer to use the form in which His Excellency put it.

CHAIRMAN—I think we may say there was a strong opinion expressed on one side and a rather weak expression of opinion on the other side.

Dr. MOONJE—Ours was the stronger opinion.

CHAIRMAN—Yours was the weak one.

Mr. JOSHI—The procedure at Committee meetings is that generally the prevailing opinion is mentioned as the opinion of the Committee, while the opinion of the dissenters is mentioned as the opinion of some.

CHAIRMAN—That is for the draftsman to put in. We shall take up items (7) and (8) this afternoon. I thought Sir Manubhai Mehta was circulating a note on (7).

Sir MANUBHAI MEHTA—The note on (7) is being circulated and we can take that up to-morrow.

CHAIRMAN—We shall take up “Centrally administered areas” in the afternoon. When I was not here, I understand there was a question discussed about local telephones in provinces and it was adjourned in order that we might have the views of an expert. If you like, we can procure our expert to-morrow morning to tell us all about it.

Dr. SHAFAT AHMED KHAN—That will be quite convenient.

Sir C. P. RAMASWAMI AIYER—If all we have for this afternoon is “centrally administered area” it will not take more than half an hour.

A MEMBER—It will take more.

CHAIRMAN—There is much more lower down. But as far as I can see at the moment, that is the only subject to be talked about. It seems to me that not a great many is left on the agenda that we can discuss at the moment without some difficulty. I do not know what you wish to do. We can either this afternoon discuss “centrally administered areas” and leave extradition till to-morrow or leave both those matters to be discussed to-morrow morning.

Sir AKBAR HYDARI—That would be better; then we do not meet this afternoon.

CHAIRMAN—We can take up No. (7) under Head III “Railway jurisdiction in States territories” on Saturday morning. Would you rather sit this afternoon or to-morrow morning?

MEMBERS—To-morrow morning.

CHAIRMAN—Then we take up No. (8) under Head III and No. (3) under head II to-morrow morning.

*(The Committee adjourned till 10.30 a.m. on Friday, the 4th March, 1932.)*

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PROCEEDINGS OF THE CONSULTATIVE COMMITTEE OF THE  
ROUND TABLE CONFERENCE AT A MEETING HELD IN THE  
COMMITTEE ROOM IN THE VICEROY'S HOUSE, NEW DELHI,  
AT 10.30 A.M., ON FRIDAY, THE 4TH MARCH, 1932

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*Present:* HIS EXCELLENCY LORD WILLINGDON (*Chairman*), THE  
HONORABLE SIR HENRY MONCRIEFF-SMITH (*Vice-Chairman*).

*Members:* THE RAJA OF SARILA, RAO BAHADUR V. T. KRISHNAMACHARI,  
NAWAB LIAQAT HAYAT KHAN, SIR MANUBHAI MEHTA,  
NAWAB SIR MUHAMMAD AKBAR HYDARI, SIR MIRZA  
MUHAMMAD ISMAIL, MR. E. C. BENTHALL, MR. A. H.  
GHUZNAVI, MR. M. R. JAYAKAR, MR. N. M. JOSHI,  
DR. B. S. MOONJE, SIR A. P. PATRO, SIR C. P. RAMASWAMI  
Aiyer, SIR TEJ BAHADUR SAPUR, DR. SHAFAT AHMAD  
KHAN, CAPT. SHER MUHAMMAD KHAN, RAO BAHADUR  
SRINIVASAN, SARDAR SAHEB SARDAR UJJAL SINGH, AND  
MR. ZAFARULLAH KHAN

*Secretaries:* MESSRS A. LATIFI AND B. RAMA RAU

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CHAIRMAN—Gentlemen We have got the advantage of hearing Mr. Ryan and Mr. Purcell this morning. I was not present on the occasion when you discussed this particular matter of Posts and Telegraphs, but I understand that the Members wanted information on a certain point that was connected with Posts and Telegraphs which is referred to in the recommendation of the Joint Committee. The Joint Committee thinks that for technical reasons the local telephones in British India cannot be made a central subject. I think we are anxious to know what those technical reasons were.

MR. ZAFARULLAH KHAN—The question was, Your Excellency, whether in future, if a province meets certain requirements of its own, for instance, I gave the instance of the Punjab in the case of the hydro-electric scheme, who wanted to set up a local system of telephones for the purposes of that scheme at its own expense, whether there would be any difficulty in permitting it to do so; and whether in all cases a province must come to the Federation in order to ask them to set up a system which they want; and supposing the Federation says we do not want to set up the system you require because it won't be a paying system—

CHAIRMAN—Well, now, might I ask either Mr. Ryan or Mr. Purcell to help us in the matter.

MR. RYAN—Yes, Your Excellency. We have not been able to find out the precise considerations which were in Sir B. N. Mitra's mind when he made this observation, and the fact is that if a telephone system is a local one and is always going to be a local one we are not aware of any real technical reasons why it should not be under local provincial administration. There might be other reasons, for instance, the practical difficulty of having competent supervision which would be more easily provided by the federal system which has its own staff in connection

with the telegraphs, but there is no purely technical reason so long as it is and is always to be local. The general trend of telephone development, however, is that local systems, however local they may be to start with, do tend to link up with trunk lines and with other systems and if that is at all in prospect there are strong technical reasons why they should be under federal control from the outset or at least should be constructed up to the standard which the federal authorities would themselves maintain, because a system may be perfectly good for local communication, but when connected up with the trunk, owing to its resistance and so forth, it may be unsuitable for through communication, thereby not only failing to serve the immediate purpose, but taking up the time of the trunk line which is thereby put out of use for other purposes. We have actual examples of that kind before us now. Local systems which were quite good when they were started and are still quite good for local purposes are not working ideally to the satisfaction of the trunk lines.

Sir A. P. PATRO—Shall we take the analogy of the Railways. Feeder railways are connected with the main trunk lines, but still the feeder lines are all under provincial control. Similarly, if local line telephones are under provincial control and are only connected with trunk lines, is there any objection to having them provincialised?

Mr. RYAN—I am not sure of your analogy. I believe experience has shown that where a feeder line has been constructed there is a great tendency for extension and expansion until it becomes part of the larger railway system.

Sir A. P. PATRO—So long as there is no competition between the trunk line and the provincial line, what technical objection is there to making it provincial?

Mr. RYAN—I do not say there is an objection. The only real objection I say to a telephone system being established and working under provincial control is that it will probably be so established and worked with a view to local requirements only and will not fit in conveniently later on with the trunk connections. There is a risk of that.

Sir A. P. PATRO—As regards supervision there is always efficient supervision available in consultation with the Federal Government or administration. Its officers would always be available for the purposes of supervision. So for that reason you would not object to the subject being under provincial control?

Mr. RYAN—I am not objecting to it. I am only pointing out what are possible disadvantages.

Mr. ZAFARULLAH KHAN—Supposing some sort of condition were laid down that provinces will be at liberty to construct and maintain a provincial system of telephones provided the technical standard came up to the requirements laid down by the centre, I think the difficulty which is being submitted would disappear in the event of their having eventually to be linked up.

Mr. RYAN—I think that if that condition could be prescribed and enforced it would probably meet the point that we have mentioned, Sir.

RAO BAHADUR V. T. KRISHNAMA CHARI—Even now, when a local system wants to link up with the trunk telephone system, permission is sought and then the Telegraph and Telephone Departments come along and say—unless you effect such and such improvements in the local system



we cannot give you permission for technical reasons to link up with the trunk lines—and the local system carries out the improvements. We had that in Baroda the other day. We wanted to link up our local system with the trunk line between Bombay and Hyderabad. The Telephone engineering authorities came to see our system and said that certain improvements should be effected in the system before we could be allowed to link up, and we effected these improvements and then we were allowed to link up. That system exists at the present moment and if that is made part of a general understanding there should be no objection to local systems.

MR. RYAN—I think it would go a long way to meet this point; but I think it would not always be easy for the provincial system to come up to the standard necessary.

RAO BAHADUR V. T. KRISHNAMACHARI—In that case the local system would remain local.

MR. ZAFARULLAH KHAN—I can meet that. I suggest that at the time of construction a condition should be laid down.

MR. RYAN—That would be better from our point of view, though it would, of course, entail expense on the local authorities which they might not like.

CHAIRMAN.—You say it is very difficult to ensure efficient control. Does that mean you have got to unify the whole thing?

MR. RYAN—What really happens now in British India is that practically all these local systems are often now provided by the Government Telegraph Department and they are from the outset constructed to that standard which will enable them to work in with the trunk lines. It is very largely a matter of the quality of the cables and the wires.

CHAIRMAN.—So that really there is no difficulty.

MR. RYAN—At the present time there is no difficulty. The difficulty might arise if the provincial Governments were to establish new local systems of a lower standard, that difficulty could be met in the manner which has been suggested by Mr. Zafarullah Khan.

SIR A. P. PATRO—If you lay down the rules which are to govern the standards which they are to maintain there would be no difficulty in making it a provincial subject.

MR. RYAN—Well, that presupposes control by the Federal Government.

SIR A. P. PATRO—You merely lay down rules relating to inspection, and so on.

MR. ZAFARULLAH KHAN—We could lay down that provided such and such requirements are fulfilled the thing may be done. That does not mean that you lay down the whole thing for this system. You lay down the essential conditions which will make it easy subsequently to link up.

MR. RYAN—I agree with that.

MR. M. R. JAYAKAR—I suppose this telegraph system is linked up with your Post and Telegraph system to a certain extent?

MR. RYAN—Yes.

Mr. M. R. JAYAKAR—And it will be desirable to leave the ultimate control of the telephone system in the same hands in which the post and telegraph system should be in order that the two may work in harmony.

Mr. RYAN—It seems to me that it would be desirable.

Mr. M. R. JAYAKAR—Then supposing, quite apart from the difficulty you mentioned of maintaining a high standard—supposing a local area was developed by a local agency, so far as local telephones are concerned, and it was fully developed and then the improvement of that local area rose, either in a political or a military way, in some other way, and the Federal authorities thought that they should run that system so far as that area is concerned, having regard to the increased improvement of that area, would you in that case leave it in the hands of the Federal authorities to control the local system?

Mr. ZAFARULLAH KHAN—May I interrupt for a moment, sir? Is it a matter of technical difficulty we are discussing or a matter of general consideration?

CHAIRMAN—I should like an answer to Mr. Jayakar's question.

Mr. M. R. JAYAKAR—I am asking Mr. Ryan as an expert for a solution which we as laymen do not know. Have I made myself clear?

Mr. RYAN—I think so, sir. You envisage a case in which a local area is fully and satisfactorily supplied by a local telephone system. I cannot imagine that in that case the Federal Government would have any interest in interfering except when it was suggested by somebody or other that that system should be connected up with the trunk system. It is possible in that case that, although the system is good enough for its local requirements, it is not good enough technically for this through connection.

Mr. M. R. JAYAKAR—But supposing for some reason the Federal Government thought it would be more advisable that for military or political reasons it should run the telephone system in that local area, would you leave the power in the hands of the Federal Government to do so?

Mr. RYAN—I should certainly say that the Federal Government should have the power to do what by hypothesis you assume it should wish to do. But that is for technical reasons.

Sir C. P. RAMASWAMI AIYER—I should like to know what procedure is now followed in the case of Indian States who wish to establish telephone systems.

Mr. RYAN—Might I refer this question to Mr. Purssell, as he is posted up in the practice in the past.

Sir C. P. RAMASWAMI AIYER—Supposing an Indian State wishes to open up a telephone system, what procedure would it adopt?

Mr. PURSELL—As long as the system is wholly within the limits of the Indian State it has a completely free hand in the matter and it is under no obligation to conform to any standards or to obtain any permission of Government at all.

Sir C. P. RAMASWAMI AIYER—The question arises only when it has to link up.

Mr. PURSELL—Then, of course, the question of the standard arises.

Sir T. B. SAPRU—May I know in how many parts of British India are there local telephone systems at the present moment?

Mr. RYAN—In the big towns there are certain telephone systems worked by companies under licences, that is the case in Bombay, Madras, Rangoon, Calcutta, Moulmein and Ahmedabad.

Sir T. B. SAPRU—Are they subject to your control?

Mr. RYAN—Within the provisions of the licences which we give.

Sir T. B. SAPRU—And they are linked up with the general lines?

Mr. RYAN—They are being linked up. The truth is until recently we have not had anything like an efficient trunk system in India, but that is being developed. It has been somewhat rudimentary hitherto and it is now being developed and improved.

Mr. N. M. JOSHI—May I ask one question, sir? You do not object, even in the present circumstances, to private companies starting telephones if they take the licence and accept your conditions. You don't object to any private organisation?

Mr. RYAN—Well, by hypothesis we could not since we are the people who would have to give the licence. You were asking whether we would object to a company doing this under a licence. The question answers itself. Our policy—the policy of Government—is not to encourage the development of telephone systems of private companies.

Mr. N. M. JOSHI—That is a question of policy. I am asking what your actual local powers are.

Mr. RYAN—Our local powers are to issue a licence.

Mr. N. M. JOSHI—You have a power to issue a licence. So, if a local government wants its own local system what you will locally insist upon is that they should take a licence from you. As matters stand there is no difficulty, for any local government when starting its own local system has to ask for a licence and you issue the licence?

Mr. RYAN—Of course, we will be apt to make difficulties about it.

Mr. N. M. JOSHI—That is a matter of policy but not a matter of law. So even if the telephones are made a federal subject and the control is left to the Federal Government till it is possible for local governments, after having a licence from you, to establish their own local system.

Mr. RYAN—Yes, subject to the licence.

Mr. M. R. JAYAKAR—Who is the licence issued by?

Mr. RYAN—By the Director-General of Posts and Telegraphs.

Mr. M. R. JAYAKAR—Would you give that power under the federal system into the hands of the provincial governments?

Dr. SHAFAT AHMED KHAN—Nobody suggested that.

Mr. RYAN—I should say “No,” sir. I think the power ought to be reserved to the Federal Government.

Mr. A. H. GHUZZAVI—What about the position of the Bengal Telephone Co., Ltd. It is a private company working under a licence.

Mr. RYAN—Under a licence from the Government of India.

Mr. E. C. BENTHALL—Have you had much pressure from the provinces to develop telephones in undeveloped areas?

Mr. RYAN—Not much pressure. In the case of the Punjab and the U.P. I think they have rather pressed and got licences for working telephone systems.

Mr. PURSELL—The hydro-electric scheme in the Punjab have just been given a licence, but that is simply and solely for the administration of its own section.

Mr. E. C. BENTHALL—But if a province wished to develop its telephone system by opening up systems in various towns?

Mr. RYAN—We would really prefer to make that development ourselves and we would probably propose that as a preferable alternative.

Mr. E. C. BENTHALL—But if several provinces were following that policy at the same time would you have difficulty in dividing the finances available?

Mr. RYAN—I should not think so. Generally speaking we have not had difficulty about the provinces so long as the thing could be shown to give a reasonable prospect of return. As Mr. Purcell observes, we are always ready to provide systems for local governments on actual costs. If we thought a system was not going to pay we might ask for a guarantee, but generally these systems give good prospects of satisfactory returns and where there is a good prospect we meet it.

CHAIRMAN—Are these telephone systems generally started in the provinces?

Mr. RYAN—No. The initiative hitherto has been taken by the Government of India—that is to say, by the Post and Telegraphs Department—in this matter and generally the practice has been for our own officers to suggest the installation of a telephone system in a town or a local area and we generally go ahead. We have not hitherto had suggestions of any importance about these matters from the provinces. The thing has been left to the P and T. Department, which has extended the telephone system in that way by setting up telephone exchanges.

CHAIRMAN—But it was under the control of the province?

Mr. RYAN—Of the Post and Telegraph Department here.

Sir C. P. RAMASWAMI Aiyer—May I ask for information on that? Is it possible that in any locality the telephones may compete successfully with the Telegraph Department?

Mr. RYAN—It is. The experience, I think, in other countries where telephone trunks have been widely developed shows that there is competition. It is not a very formidable one to-day in India, but there certainly are possibilities.

Sir C. P. RAMASWAMI AIYER—But is it the experience of other countries where there has been an extended telephone service that for local service telephones have been competitors with the telegraph and it is possible that by so adjusting telegraph rates to seriously, or at all events to a certain extent, to affect telegraph profits?

Mr. RYAN—It is a possible development. Almost a probable development.

Sir C. P. RAMASWAMI AIYER—Such a possibility has not been entirely absent in other countries?

Mr. RYAN—No. Mr. Puissell observes that in the case of Lahore and Amritsar this development has already been rather noticeable.

Sir C. P. RAMASWAMI AIYER—So that on the whole, therefore, it would be well that some kind of unified agency should exist so as to co-ordinate the activities of the telephone and telegraph departments?

Mr. RYAN—We do feel so.

Sir A. P. PATRO—And do not you think that is a difficulty? If you say telegraphs will be affected by it therefore the Government of India and the Post and Telegraph Department will think twice before a licence is granted to a province.

Mr. RYAN—Well, of course, it is difficult to know how far our own interests would influence us in these matters. We should certainly dislike seeing our revenues taken away. That has already been suggested as an objection.

Sir A. P. PATRO—So that you would be led to a preference of telegraphs to telephones.

Sir C. P. RAMASWAMI AIYER—Whereas the consumer, the man who has got to use the telephone or telegraph, prefers the telephone because he can expand himself, provided he can adjust his pace.

Dr. SHAFAT AHMED KHAN—Mr. Ryan, I take it that, though you have no objection to the maintenance or establishment of local telephones, you would like the two to be co-ordinated?

Mr. RYAN—We have no technical objection so long as it is purely local. If the local system will in time be linked up with the trunk line—

Dr. SHAFAT AHMED KHAN—So you have no objection if it be co-ordinated with the local trunk line?

Mr. RYAN—If it is purely local there is no question of linking up.

Dr. SHAFAT AHMED KHAN—If it is up to the standard laid down by your Department?

Mr. RYAN—That will go the whole way to meet our objection.

Mr. PURSELL—May I mention that with our own unified control we find it most amazingly difficult at present to co-ordinate two local systems joined together with the trunk. The margin for trunk working is so small that the least thing that goes wrong upsets the communication between the two systems and the analogy usually drawn of the feeder railway and the main trunk railway as being somewhat the same is

incorrect. It is not at all the same because at the instant of speaking, obviously, all the lines from one subscriber on one system to one subscriber on the other are in use simultaneously so if anything goes wrong on either circle it puts the whole thing completely out of gear.

Mr. JAYAKAR—That is an argument for unified control.

Mr. PURSELL—Yes, for efficient trunk working and for the development of telephones some sort of unified control is absolutely essential. I may mention, too, that in America some years ago the local systems were moderately independent and the Americans which is, of course, most purely a commercial company, found it absolutely necessary to put practically the whole thing under one unified control for the whole of the United States.

Nawab Sir MD. AKBAR HYDARI—Is it not possible for you to disconnect any particular local system of the trunk system if that is found to be giving trouble temporarily and thereby prevent the fault of any particular local system from reacting on the other systems which are connected with the trunk system?

Mr. PURSELL—It is quite possible to do so, but then that represents a loss of money. If you throw a local system out of use, even temporarily, it means a loss of money, both for the local system and the trunk system.

Nawab Sir MOHD. AKBAR HYDARI—The local system might be made internal in the position it holds. But I understood your position to be that as it is a purely technical matter all the local systems are so much interconnected that as soon as they are brought into connection with the trunk system any fault in one individual local system throws out of gear all the other systems, so far as their connection with the trunk system is concerned.

Sir AKBAR HYDARI—It is possible, when you find that a portion of the local system becomes inefficient or that some defect is found in it which requires to be remedied, to disconnect it temporarily from the trunk system until this defect has been put right?

Mr. PURSELL—It is quite possible to do so.

Sir AKBAR HYDARI—Then from the financial point of view it is impossible.

Mr. PURSELL—It is highly undesirable.

Sir AKBAR HYDARI—It is very undesirable, that is what I want to say. You say it is quite possible.

Mr. RYAN—It is quite possible; but the trouble may give rise to dispute or friction.

Sir AKBAR HYDARI—The trunk system, I understand, will be entirely under the control of the Federal or the Central Government and they will be the final authority to decide what should be done with reference to the connections in any part of the local system.

Sir MANUBHAI MEHTA—I shall relate our experience in Bikaner. We have a long local system which works very satisfactorily and there is no difference between what we have and the Government of India

Telephone Department. When we wanted to extend it to the districts—because we have undertaken the electric supply to district towns from the capital—we wanted telephone connection and that telephone connection through the telegraph office. As Sir C. P. Ramaswami Aiyer has said, there was naturally a little fear that the telephone connection would impair the revenues of a telegraph department correspondingly. The telegraph department was naturally anxious to secure that the telegraph receipts should not suffer. They were disinclined to allow us to have those two or three connections with the towns and they proposed exorbitant rental, and we had to forgo this scheme on this account. So, naturally, the Central Government Department would be averse from giving local connections through telegraphs.

Mr. RYAN—I do not know personally anything of the details connected with this case. Possibly Mr. Purcell may know something about it.

Mr. PURSELL: I am afraid I do not know this particular case, but it is very definite that the powers of the department are to extend its trunk lines whenever possible.

Mr. BENTHALL—This was not a case of the trunk system but telephone and telegraphs working together.

Sir MIRZA MD. ISMAIL—I cannot at all understand why the telegraph department was brought in at all.

Sir MANUBHAI MEHTA—We wanted to extend the telephone through the telegraph department.

RAO BAHADUR V. T. KRISHNAMACHARI—You could have put it independently.

Sir MIRZA ISMAIL—You asked the telegraph department to do this for you and offered some price for it.

Sir MANUBHAI MEHTA—As long as it is local there is no difficulty.

Sir AKBAR HYDARI—I think the Central Government telegraphs and telephone department are one and the same and therefore even if it was done it was a gain to the telephone department. Therefore they could have looked at it from the same point of view as the telegraphs.

Sir MIRZA MD. ISMAIL—You thought that it would be more economical if you had these telephones through the telegraph department.

Mr. M. R. JAYAKAR—Could you have that done without going to the telegraph department?

Sir MANUBHAI MEHTA—Yes, we could have done it.

Mr. RYAN—Any State is free to develop its own local telephone systems.

Sir MANUBHAI MEHTA—Through licensed contractors and engineers who could construct telephones we could have got the work done.

Mr. PURSELL—May I explain to you one point, sir, that appears to be overlooked, and that is, that by our using all the telegraph lines

and posts, we can almost invariably supply trunk lines co-ordinating, of course, one system with the other more cheaply than anyone can who has to erect his own poles and lines.

RAO BAHADUR V. T. KRISHNAMACHARI—This is correct.

Mr. PURSELL—With regard to the question of charges. I am at present in the head office working out the charges for trunk lines and I can assure you that there is no question of the loss of telegraph revenue ever entering into the matter. In the rentals for trunk lines are included simply and solely the capital cost to Government. There is no question of loss in telegraph receipts.

SIR MANUBHAI MEHTA—We were given the answer that the proximity of the telephone lines would impair the usefulness of the telegraph nearby.

Mr. PURSELL—That was unauthorised.

CHAIRMAN—Does any gentleman want to ask any question? We are much obliged to you both (Mr. Ryan and Mr. Purcell) for coming here and giving us the information.

*(Messrs. Ryan and Purcell left the Committee)*

Mr. ZAFARULLAH KHAN—The position with regard to the point over which we have troubled these two gentlemen is therefore this. That, so far as a line or a system of the kind I have suggested is concerned, where a local government for its own needs thinks that it would be convenient, or thinks that it would be necessary to have a telephone system of its own, confining it within their own territory, and gets the telegraph department to extend their own system in connection with that purpose or into their territory, and so on, or if the local government wants to have their own local system, there is no technical difficulty likely to arise in case the system is set up in accord with the requirements of special standards laid down by the telegraph department. That is the technical aspect. In certain cases the difficulties might arise. For instance, it was mentioned by Mr. Jayakar that supposing that has been done and the local government runs the system at its own cost, but that subsequently it becomes necessary, for military or political reasons or for some other considerations, for the Federal Government to run that system as part of its own system, that will be a matter for negotiation between the particular local government and the federation, and there will be thousands of other matters which, in future, in the federation, will be matters for negotiation, and it can easily be settled that way. Provided the local government would still be allowed to keep its service on the system, which the federation were originally unwilling to run it as their own and now are willing to do so, I do not see there will be any difficulty in handing over the system after negotiations on some fair basis. It was suggested that unified control, for the purposes of running an efficient trunk system, is desirable. It is always open to the telegraph department, in addition to laying down previous requirements with regard to special standards, when linking up to insist that certain conditions must be complied with, as it has been suggested and, if not, no trunk connection should be given. If a local government does establish a local system of its own and does it on the distinct understanding that if, at any subsequent time, it wants to link up with the trunk system it will have to comply with the requisitions of the telegraph department, who will have to be satisfied that the system, when linking up, will not impair the utility of their own trunk system. My submission, therefore, is that so long as a province wants to establish its own local system for its own needs in



the sense that it does not extend beyond its area, and so long as it complies with the standards laid down and also with the rules which are designed to eliminate competition with the central system, it should have power to do so.

Sir C. P. RAMASWAMI AIYER—My personal opinion is practically the same as Mr. Zafarullah Khan's, but there are certain difficulties which I desire to point out. I fully agree that, if it were possible to keep the local system apart from the central system, it ought to be open to any local government or unit to have its own system until and unless they desire to link it up with the main system. On that point there is no difference of opinion. We should also consider the possibilities of the necessity of the telegraphs and telephones on occasions of national emergency or of trouble. It should be in the highest degree essential that services like the wireless, telephones and telegraphs should be under some kind of possibly unified control and regulations, and I dare say certain rights will have to be framed for the purpose. But with regard to linking up, my difficulty is this. Supposing a local government or unit starts the service and works it within its own limits. At the time of linking up the federal organization says, "Unless you bring up the telephone service to this standard we cannot link up." Then, of course, the local government complies and gets the service linked up. But after some time the service might have fallen short in efficiency and it is open to the Federal Government to inspect. In practice would it not create trouble? Especially in services like telephones and telegraphs periodic inspections are necessary for the purpose of keeping up the standards as in any other department and, therefore, unless some kind of periodic inspection for the purpose of seeing that the standards are maintained as well as set up on the right lines is made, the system cannot work well. Subject to these two conditions, namely, the maintenance of the standards at the time of linking up and the keeping up of the standards during the time that the systems are linked up. I have no objection to the suggestion.

Mr. ZAFARULLAH KHAN: That will be necessary. If a province thinks that there is a genuine need for the service and feels that they should have it even at a loss and if the Central Government refuses to run the service as their own on account of the loss involved, the province should be allowed to run the system if it so chooses. But when it comes to the question of linking up it should certainly satisfy the conditions and must continue to satisfy the conditions so long as they are linked up.

CHAIRMAN—Are all agreed to this?

Mr. N. M. JOSHI—I do not agree. I think that, just like the Post Office, the telephone system, if it is to give better service on the whole, should be one system all over the country as it is at present in the constitution. Even under the federal system there is nothing to prevent any private organization or a Government organization starting its own telephone system, with the consent of the Central or the Federal Government. I therefore think that the Federal Government should ultimately control the system and it should not be handed over to any province.

Mr. M. R. JAYAKAR—I do not think it is suggested that the ultimate control should be taken away from the Federal Government.

Sir C. P. RAMASWAMI AIYER—The consent to these periodic inspections means regulating the jurisdiction.

CHAIRMAN—Ultimate control always remains central.

Mr. N. M. JOSHI—The question is not whether the centre should start the work or the provinces should start the work, but if the centre has got the control which is necessary I think provinces must obtain permission from the centre.

Mr. M. R. JAYAKAR—I think it was agreed that the centre must have the power to insist and control so far as standards and efficiency are concerned.

Mr. N. M. JOSHI—Not even that.

CHAIRMAN—What I understood was that the centre has to give a licence anywhere for starting a service. Therefore ultimate control must remain with the centre.

Mr. N. M. JOSHI—If Mr. Zafarullah Khan agrees that the provincial government would only start with the permission of the Federal Government, I have no objection.

Sir C. P. RAMASWAMI AIYER—I take it it was agreed on all hands that, if a telephone system was sought to be operated solely and simply for the purpose of a local area, there is no technical objection to run it in that capacity. If and when that local or narrowly circumscribed telephone system wants to be linked up with the system of the Federal Government, not only would the consent of the Federal Government be obtained for the purpose of linking up but that certain standards should be maintained as the condition precedent to linking up and periodic inspections would be necessary for the purpose of preserving those standards.

Mr. M. R. JAYAKAR—May I put one point, sir? Both the two expert witnesses said that even in the case of purely local telephone systems licences will be given by the Government of India departments.

CHAIRMAN—That is what I understood.

Mr. E. C. BENTHALL—Just as at present.

Mr. ZAFARULLAH KHAN—At present the whole control is in the hands of the Government of India, but I was urging that, apart from the question of any private company which must still obtain a licence from the Federal Government or the Central Government, the local government as such should have the power to establish a local telephone system within a certain area which is to operate only for the local government's needs. And, even in this case, before linking up, I am willing to agree that even for the local telephones certain standards which have been laid down should in all cases be complied with. Then, if the system wants to be linked up with the trunk system or any other system maintained by the centre, the local government must comply with all the requisitions of the central department and they must continue to satisfy those conditions, as Sir C. P. Ramaswami Aiyer has suggested, so long as they want to have their system linked up with the Federal Government's system. Before linking up, the local system must be in accord with certain special standards previously laid down.

SARDAR SAHIB SARDAR UJJAL SINGH—The licence granted by the Government of India to the local government also implies certain conditions which have got to be fulfilled.

CHAIRMAN—I do not think there is any difference of opinion.

Mr. M. R. JAYAKAR—It is suggested that the local government should have the power to start for their own purposes the telephone system without a licence from the Central Government.

Mr. ZAFARULLAH KHAN—The question of licence applies only to a private company and not to a local government. If you choose, you can lay down that a local government, before constructing a local system, even according to special standards, should give an option to the Federal or Central Government to set up their own system, and, if they refuse to do so, the local government should be empowered to introduce their system subject to the standards being complied with. They should be allowed to impose their own rates but their service should be within the area of the local government. They must recruit their own men on their conditions and so on. But all along they should continue to maintain the standards so that subsequently there should be no difficulty.

CHAIRMAN—You want that the local government should have power to run their own system, subject to certain technical standards which the centre has laid down, being complied with.

Dr. B. S. MOONJE—Without the licence?

Mr. ZAFARULLAH KHAN—What is the point? Anybody can get a licence.

Dr. B. S. MOONJE—That will create unfair competition.

Sir C. P. RAMASWAMI AIYER—I will give my experience. I know in certain Indian States they have their own telephones for limited purposes and in provinces also they have telephones for certain specified purposes, for example, irrigation and electric systems. These telephones are for special purposes only. Only a certain number of persons use it and do not pay for it because it is necessary for that public purpose. It ought to be open to a local government or an Indian State or a local authority to construct telephones for their own special purposes in the local areas, but even then I would insist upon certain technical standards.

Mr. ZAFARULLAH KHAN—I agree.

Sir A. P. PATRO—As Your Excellency knows, we have got the Pykara development scheme, which supplies power both for industries and for communication purposes also. Now, we are anxious to see that the power is also utilised for telephones also in the district of Coimbatore, Pollachi, Salem and Madura. Giving power to the South Indian Railway was also under consideration, but difficulties have come in with regard to our rates, and that power we propose to utilise for the purpose of developing telephones internally in the province. I do not see how we should be prevented to utilise our own power. It may be that we subject ourselves to the standards already laid down in connection with the maintenance of telephones. If we are not able to utilise that power there is loss of so much revenue to the provinces and there is loss of so much energy and power that we have created. Therefore, sir, it seems to me, subject to the rules or standards that may be laid down by the Central Government, we in the provinces should have the right to have our own internal communications, and only for the linking up of the telephone lines with the trunk line we should subject ourselves to the rules laid down by the centre.

Dr. B. S. MOONJE—Is there not a possibility of unfair competition with the telegraph?

Sir A. P. PATRO—I do not think it is unfair competition. It may be that the Central Government may lose some revenue, but a local government should have the right to develop its own resources.

Mr. N. M. JOSHI—If the power is given to local governments to compete with the central telephone system the monopoly of the Central Government for telephones is bound to be disturbed. I am, therefore, against giving power to the local governments to issue licence for telephones. If they agree to run their own system they must obtain the permission of the Federal Government, which is absolutely necessary.

Mr. M. R. JAYAKAR—I think Mr. Ryan made it clear.

Mr. ZAFARULLAH KHAN—We have already got the system whereby licences are granted by the Central Government. What is the point in our discussing a thing which we have already got?

CHAIRMAN—We want to clear this point up. I understand that Mr. Ryan agreed with the general position taken by Mr. Zafarullah Khan. You agreed that, if a private company want to start a telephone system in any province it shall obtain the licence from the Central Government, and if the local government, for their own purposes, want to start a particular telephone system they should adopt the central ideas as to the construction of their lines, etc. That is the position.

Mr. M. R. JAYAKAR—Mr. Zafarullah Khan has agreed that private companies, if they want to start a telephone system, should obtain a licence from the local government. I submit that even if a local government want to have a telephone system for their own purposes they should obtain a licence from the Federal Government.

Sir A. P. PATRO—No.

Mr. M. R. JAYAKAR—Mr. Ryan said quite clearly that in all cases at present licences are issued by the Government of India. The next question I asked, "Would you leave the power in the hands of the Federal Government?" and he replied "yes." My submission is that in all cases, whether the starting of a telephone system is by private companies or by local governments, there should be first of all a licence to be obtained from the Federal Government. It may be, in the case of purely local purposes, that telephones will be a purely technical thing and in the linking up standards will be maintained, but I cannot conceive of either a local government or a private company starting a telephone system without a licence from the Central Government.

Sir A. P. PATRO—I strongly take exception to the principle of centralisation. All through we are only talking of the unitary form of government, in which the provinces are subject to the control of the Central Government. I think the sooner we get rid of that idea the better for us to clear our understanding. If the provinces are to apply for licences for telephones the Central Government would immediately think that it is a case of competition and that there would be loss of revenue in the telegraph department. They will raise all sorts of conundrums possibly with a view to see that the provincial governments are not able to start their own systems except under their control. Thus, the provinces will always be subject to the centre. I strongly urge that inasmuch

as the telegraphs and telephones are combined in one department the central government will always try to see that their position is maintained. They would not allow provinces to develop their resources and develop their communications so long as there is conflict of interests. They will say that the local government has not complied with this or that condition and therefore they cannot grant a licence. Licence is altogether out of the question.

SARDAR SAHIB SARDAR UJJAL SINGH—This discussion arose out of head No. 10. Against that heading we can say, "Non-trunk lines in India-provincial, subject to the control of the Federal Government with regard to technical standards." That would, perhaps, meet Mr. Zafarullah's point.

Mr. ZAFARULLAH KHAN—I agree.

Dr. B. S. MOONJE—The point, sir, is that, in order to prevent competition, the starting of a local telephone system or any system should be by a licence from the Central Government.

Sir C. P. RAMASWAMI AIYER—Do the States agree to that?

CHAIRMAN—Mr. Zafarullah Khan, you do not propose that there should not be a concurrent power.

Mr. ZAFARULLAH KHAN—I said I was willing to agree to lay down that they should go first to the Federal Government and ask them whether they would put down a telephone system in a particular area, and it is only if the Federal Government does not agree to do so, I suggest that the provincial government should have the power to set up their own system.

Mr. N. M. JOSHI—It comes to taking the permission of the Federal Government.

Mr. ZAFARULLAH KHAN—There is no question of permission. They should have the power to lay down, control and maintain their system.

Mr. N. M. JOSHI—The central telegraphs cannot allow competition with their telegraph lines.

Mr. ZAFARULLAH KHAN—You can frame any regulations with regard to that. But the local system can never compete with telegraph lines unless you link them up with the trunk lines, and for this the permission of the Federal Government is necessary, and when you give the permission you will lay down your conditions.

Mr. E. C. BENTHALL—Is not the position really this? If a provincial Government chooses to start its own local service it has the option to do so keeping its own licence, but the Central Government has the option of coming along and saying, "No, this is to be part of the trunk system, I will put it up," when the question becomes central.

Mr. M. R. JAYAKAR—Therefore it comes to this, that no provincial government can start a telephone system even for serving local needs without consulting the Federal Government and if the Central Government is willing to put that down they can.

Mr. E. C. BENTHALL—As a part of the trunk system.

Mr. M. R. JAYAKAR—Therefore you have got to come to the centre.

Mr. E. C. BENTHALL—My argument is this. If it is purely local it should be purely provincial. If a local system is linked up with the trunk system, or if it is a part of the trunk system, then it will automatically go to the centre.

CHAIRMAN—I think the real difficulty is this. There are certain members who say, with certain justice, that it may be that the local government wants to establish a local system which they are afraid the Central Government will turn down saying, “Well, thank you very much, for reasons which we do not choose to disclose we are not going to let you have it.” You want to give local government power to start a telephone system subject to the general specifications of the Central Government—

Sir C. P. RAMASWAMI AIYER—Also subject to the outstanding consideration that it is open to the Central Government to put down that system as a part of their trunk system.

Mr. ZAFARULLAH KHAN—What I want is this. When a local government feels the necessity of having a telephone system, either the Federal Government should establish it, or if they think that there will be loss or that the new line is not a desirable one, they should let the province do it if the province is willing to do it at its own expense, subject to standards and subject at the time of linking up with the trunk system to any further requisitions to be complied with and maintained.

Dr. B. S. MOONJE—There is a little point which I have not been able to understand. There may be a possibility of the local government competing with the Central Government in the matter of rates.

Mr. N. M. JOSHI—I suggest, Your Excellency, that these ideas should be drafted and then placed before the next meeting. They are a little vague.

Sir C. P. RAMASWAMI AIYER—Well, I have no objection to having them drafted. But it seems to me that the difference of opinion is very little.

CHAIRMAN—The difference is between giving a licence and compliance with standards. I thought Mr. Ryan said that compliance with standards will really satisfy them. That is what I think.

Dr. B. S. MOONJE—Mr. Ryan also mentioned the possibility of competition between the central telegraphs and the local system of telephones.

CHAIRMAN—It seems to me, subject to correction, that it would be hard on the local governments, if they are anxious to start a telephone system in any particular area of their province, to be told by the Central Government “Thank you very much, we cannot allow you to do that for reasons we won’t inform you of, you cannot do it.”

Dr. B. S. MOONJE—If the Central Government does not comply with the request of the local government, it will say, “You can do it yourself, but you will have to take out a licence.”

CHAIRMAN—Why a licence ?

Dr. B. S. MOONJE—To prevent competition.

CHAIRMAN—The local government won't allow competition.

Mr. ZAFARULLAH KHAN—May I make this submission. We are here concerned with how the subject should be classified, and as regards this there should be no difficulty to adding that a local telephone system established by a local government at its own expense shall be provincial. All the ideas that have been submitted, such as whether there should be compliance with standards, etc., they should be taken into account when framing the rules for the carrying out of such works. When the local governments want to establish a system they must comply with standards, and when they want to link up with the trunk system they must comply with the conditions prescribed by the Central Government. That has, however, nothing to do with classification. We are merely deciding the classification, but not with the procedure in regard to the carrying out of such works.

SARDAR SAHEB SARDAR UJJAL SINGH—We will have no objection to the addition of words “subject to the control of Central Government with regard to technical standards.”

Mr. ZAFARULLAH KHAN—The original suggestion I made did not, I am bound to frankly tell you, go so far as you suggest. Therefore I am quite happy.

Sir MIRZA MD. ISMAIL—I see no objection to the suggestion made by Mr. Zafarullah Khan.

Mr. N. M. JOSHI—Subject to the conditions laid down by the Federal Government I am agreeable. It goes further and says “subject to the conditions as regards standards only.” I am not prepared to limit the conditions only to standards.

Sir C. P. RAMASWAMI AIYER—This argument of competition between the central and local governments does not seem to me to be very real. If as a matter of fact a local government competes with the Telegraph Department and thereby diminishes its revenues, sooner or later the provinces will have to suffer for it, for after all the federation has got to be run, and the local governments will have to contribute.

Mr. ZAFARULLAH KHAN—How can they compete unless they are linked.

Sir C. P. RAMASWAMI AIYER—If on account of shortsightedness a local government ran a kind of murderous competition with the central telegraph office it will have to be made up in some other way, and the federal will see to it that it is paid.

Dr. B. S. MOONJE—If there is such a possibility why should you not provide for it from the beginning.

CHAIRMAN—I think here again we had better state the case and say that the proposition was not agreed to by a small minority.

Mr. N. M. JOSHI—You did not say “a small minority” yesterday, you said excepting, etc., etc. If you like to put it that way, I do not object to it.

Sir AKBAR HYDARI—When shall we discuss the reports ? At the next meeting of the Committee.

CHAIRMAN—You will have an opportunity.

Sir MANUBHAI MEHTA—Right at the end of our deliberations.

CHAIRMAN—Now we go on to Extradition.

Sir MANUBHAI MEHTA—Yesterday I made it clear, and now that the notes have been circulated I do not expect there will be any difference of opinion. What I am anxious to establish is only this. There is practically or inherently no incompatibility between federation and the retention by the States of their present position under their treaties. If it is said that under federation there ought to be only one state, there will be no such distinction as British Indian citizens, and the citizens of the States, and there will be no question of extradition at all, my reply would be simply this. There are degrees and degrees of federation. It need not mean one of a rigid type, it may mean also one of a loose type. The Secretaries have put forward the instance of Switzerland. There the relations of the cantons with the centre are even now governed by treaties. Merely because Indian States have agreed to come into the federation, it does not mean that they lose their rights of extradition.

Sir TEJ BAHADUR SAPRU—Does not the position really go back to the position taken by Sir Akbar Hydari, that so far as the States are concerned, they are satisfied with the present position. That means that that position is what has been suggested by Sir Manubhai Mehta.

Sir AKBAR HYDARI—It means that extradition is governed with regard to States by specific treaties.

Sir TEJ BAHADUR SAPRU—I will only ask one further question. You do not want any modification or any change in the law as it stands at the present moment quite apart from the treaties ?

Sir MANUBHAI MEHTA—In the law as it stands at present or do you mean under federal law ?

Sir TEJ BAHADUR SAPRU—As it stands at present.

Sir MANUBHAI MEHTA—There may be small changes, but in the substance there should be no change.

Sir C. P. RAMASWAMI AIYER—Each State relies upon its own treaties and also upon conventions which have been entered into between State and State under the supervision of the paramount power. Certain States have complained that the promises made in the Act have not been carried out. You want to keep open your complaints against the rules or the operation of the rules.

Sir MANUBHAI MEHTA—Those complaints will continue and will be settled by negotiation. But federation should not come in the way of our treaties.

Sir TEJ BAHADUR SAPRU—There is nothing more to be said. If you are satisfied we have nothing more to say.



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Sir AKBAR HYDARI—Our position is reciprocity between the States and British India.

Sir MANUBHAI MEHTA—There ought to be further reciprocity between the States and British India on this point, and therefore in my note I have ventured to put forward one suggestion on which H.H. the Chancellor of the Chamber of Princes is rather keen. The States have mostly adopted criminal or penal laws, for instance in Baroda or in Bikaner disaffection would mean disaffection not only against H.M. the King Emperor but also against the Government of India—this has been done on account of treaty relations which provide that the friends and enemies of either are the friends and enemies of the other—and would be punishable there. A similar provision does not exist in British Indian laws as regards Indian States. But I do not go so far as disaffection, even defamation of princes is not an extraditable offence, and at the time the Princes Protection Act was passed the opinion of several States was called for, and from Baroda the representation was that the Princes Protection Act would not suffice or would not serve the purpose, and that the offence of defamation of Princes should be made extraditable. Your Excellency knows that in all cases of emergency the Princes have always stood by the paramount power, even recently there was a splendid response from the Princes, but if the Princes ask that defamatory attacks upon their person should be made an extraditable offence, there is some disinclination on the part of British India.

Mr. ZAFARULLAH KHAN—Do you mean that if a subject of a State committed defamation against a prince or a ruler and then escaped into the British territory, he should be returned, on the requisition of the State to the State for trial? Or do you want to extend it to a British Indian citizen.

Sir MANUBHAI MEHTA—If a British Indian citizen has committed an offence I do not see why he should not be punished.

Mr. ZAFARULLAH KHAN—If it is a State subject you catch him within your State and punish him, and if he has escaped into the British territory you cannot do it.

Sir TEJ BAHADUR SAPRU—I am to a very great extent in sympathy with what Sir Manubhai Mehta has said. But I would not commit myself wholly to his views because I do not think that this Committee has been called upon to decide as to what offence shall be extraditable or what offence shall not be extraditable. That will require very careful consideration of the various sections of the Indian Extradition Act and the various treaties. It is a perfectly legitimate question which Sir Manubhai has raised, but this Committee is not called upon to express any opinion in the matter.

Sir C. P. RAMASWAMI AIYER—That is why I ventured to say not only in the case put before us by Sir Manubhai, I have in my mind other cases where certain variations in the existing practice might be necessary. This Committee, however, as Sir Tej has rightly remarked, is not the forum for discussing and deciding them. They would be dealt with by you and the authority which would ordinarily dispose of your questions.

Sir MANUBHAI MEHTA—I am in perfect agreement with you. At present there are discrepancies between our treaties and the Extradition Act. There are certain offences which are extraditable under the Act,

but are not extraditable under the treaties. When such cases arise, naturally the political officers ask us to guarantee at the time of demand for extradition from an Indian State that the State would raise no objection to reciprocating in the matter and sending the State offender for trial, and we often give our consent on terms of reciprocity. Therefore I ask that these discrepancies should be removed, and there should be perfect reciprocity between the States and British India.

Sir A. P. PATRO—You want to revise the Extradition Act by adding to it or subtracting from it. That is not the function of this Committee.

Sir MANUBHAI MEHTA—I know.

Sir TEJ BAHADUR SAPRU—These are questions which can ultimately be raised either in the Indian Legislature as it is at present constituted or in the future Federal Legislature.

Mr. V. T. KRISHNAMACHARI—Broadly speaking, the existing treaties should be left undisturbed, each State being at liberty to negotiate for any changes it requires.

Mr. M. R. JAYAKAR and Sir TEJ BAHADUR SAPRU—We have no objection to that.

Mr. M. R. JAYAKAR—I want to make one point clear, because it might be included in the doctrine of reciprocity. It is a general principle. I do not want to go into offences which are extraditable. Suppose an offence is an offence according to a State law but it is not so according to British Indian law, and suppose such an offence is committed by an Indian inside British territory, is it suggested, on the suggestion of reciprocity, that he should be allowed to be extradited.

VOICES—No, no.

Sir MANUBHAI MEHTA—If the offence is committed in British India how can we ask for his extradition? If a man commits an offence in our territory and runs away to British India he should be allowed to be extradited.

CHAIRMAN—I do not think that this is a matter on which we can come to a final conclusion. I think it has been very interesting to hear what the States representatives have said on the subject, and perhaps I might be allowed to say I have a great deal of sympathy for their views.

Mr. N. M. JOSHI—The present Act and the present rules remain.

CHAIRMAN—That is right.

Sir MANUBHAI MEHTA—Let it go on record that Your Excellency has real sympathy for us.

CHAIRMAN—Centrally administered areas. The first point is—Is any constitution reform necessary in Delhi? May I refer you to section 80 of the Government of India Despatch. Are you satisfied with that position?

Mr. N. M. JOSHI—I have not got a copy of the report.

CHAIRMAN—I think it was sent to you. I will read the relevant portion :—

In our memorandum to the Commission on the subject of the Delhi Province, we observed that it comprises the seat of the Imperial Government, and those areas alone which could not conveniently be severed from it. Though the memorandum was descriptive only, we drew upon the precedents of other countries to emphasize our direct interest in the general and political condition of our own enclave. The Commission's view that the form of government in Delhi cannot be usefully altered is entirely in accord with our own opinion. In our own suggestions for the constitution of the Assembly we meet the point taken by the Chief Commissioner that there should be two seats, one for a Hindu and one for a Muslim representative of the Delhi Province.

Mr. N. M. JOSHI—I read in the papers that the people of Delhi want to have a province of their own.

Mr. E. C. BENTHALL—They will have to pay for it.

Sir TEJ BAHADUR SAPRU—It is quite clear to my mind that we are not in a position to express any opinion about the Delhi province, for none of us really is in a position to say what exactly the feeling of the people of Delhi is. I would very strongly support asking some Delhi citizens to come and tell us what exactly they wanted. It is taking a very serious responsibility. We should try to educate ourselves and find out what the views are of the Hindus, Mohammadans and the officials connected with Delhi. I have got properties in Delhi, I am an old resident of Delhi, but I would not venture, having been out of Delhi for over five years, to express any opinion, and I would certainly say that in order to come to a decision we must try to find out what exactly are the views held by Delhi citizens and Delhi officials.

Sir MANUBHAI MEHTA—A similar request is being made by the people of Ajmer-Merwara in Rajputana. They asked me to put before Your Excellency that Ajmer-Merwara should have a place in the new constitution.

Sir TEJ BAHADUR SAPRU—We might get an individual or two just to talk to us formally so that it may not be said afterwards that we came to our conclusions behind their backs.

CHAIRMAN—That would really apply to Ajmer-Merwara. We should know whether Coorg wants any changes in its present constitution.

Sir C. P. RAMASWAMI AIYER—Coorg has submitted a memorandum to the Round Table Conference with regard to its share in the central legislature.

CHAIRMAN—I see here from the Chief Commissioner's letter that in Coorg itself they appear to be divided in their views on the future status of the province. Perhaps you would like to hear them also.

Sir T. B. SAPRU—We should give them a chance.

Mr. E. C. BENTHALL—Have a sort of small Round Table Conference.

Dr. S. A. KHAN—Inviting both officials and non-officials. .

Mr. E. C. BENTHALL—In the case of Ajmer Merwara I take it it would be a central subject, but in the case of the Capital City, Delhi, would that be a federal one, apart from its classification ?

Sir T. B. SAPRU—That is an important point which has to be decided. It so happens that at present in Delhi the Indian States have very substantial properties and interests.

CHAIRMAN—The only thing I feel is that there have been considerable inquiries already and it seems to me we shall not get much further information. I think it would be difficult for us to go into all the details with regard to these various areas, financial and others.

Sir C. P. RAMASWAMI AIYER—What are we expected to do on this item ?

CHAIRMAN—Mr. Dunnett rather suggests that we have to make up our minds first as to what is to be the ultimate development of these areas, whether they should become provinces or become incorporated in others. That is the general idea. Secondly, whether they should for the present be central or federal.

Sir C. P. RAMASWAMI AIYER—It is with regard to that I feel some doubt. Take the first of the points indicated. I know that Mr. Sarda, who comes from Ajmer-Merwara, holds very strong views on this matter. Now, one would not like to decide without hearing those views. And the views already collected may be summarised and placed before us. In other federations the Capital has been generally federalised. Washington is a federal town. Is New Delhi to be federal ? Is the claim of old Delhi to be linked with the Punjab to be acceded to, or is it impossible to differentiate between Old and New Delhi and is it necessary to make the whole Delhi Province as federal or central. If that problem arises, it is very closely connected with the second of the points in Your Excellency's remarks. I say that, apart from the question of inviting these people to meet us, let a summary be prepared of the views already gathered, and if we can come to a decision on that we shall do it.

CHAIRMAN—I would only just add that in the present financial situation it does not seem very probable that we could come to the conclusion that they should immediately become provinces.

Sir M. M. ISMAIL—While on this, may I raise the question of the status of what is called the assigned tract of Bangalore under the new constitution.

CHAIRMAN—I think that is quite outside this. It is being dealt with by Mr. Davidson's Committee.

Sir M. M. ISMAIL—I was thinking of the position of the people of that tract.

Sir C. P. RAMASWAMI AIYER—That is an important problem. There are certain other problems arising elsewhere which have also been placed before the Davidson Committee. What I am suggesting for the discussion of this item is that the material available should be summarised for us.

CHAIRMAN—I say, certainly, on the condition that we really keep to the main principles and do not come down to details and discuss with individuals.

Sir A. P. PATRO—I think what we are expected to do appears from para. 83 at page 80 of the Government of India Despatch. They say :—

“ We accept the Commission’s view that the time has not come for constitutional changes in any of these four central areas. We recognize that their existing system of administration may in course of time come to require modification. We should hope therefore that there would be machinery in the constitution to enable administrative and constitutional changes to be made at any time in the form of their government.”

That is what we are expected to do, to provide the machinery in the constitution to make changes in future.

Sir C. P. RAMASWAMI AIYER—That is not quite enough. In the case of Delhi some immediate changes will be necessary, *e.g.*, to fit it into the federal scheme.

Sir A. P. PATRO—With all respect I think that is going too far from the point of view of the administration of the central areas.

Sir M. A. HYDARI—I submit that a summary be prepared of the material we have already got, and before we discuss it here a ruling might be given as to the particular points for discussion by the Consultative Committee.

Sir T. B. SAPRU—I also suggest that some means ought to be taken to ascertain the views of the people. Because when the Simon Commission made its enquiries the constitutional position was not exactly the same. We have moved on a great deal since. Assuming we are going to have a federation, I should like to know the views of the citizens of Delhi as to how they would like to be linked up with the Central Legislature.

CHAIRMAN—In fact, you would like us to write to the Commissioners of the various areas and ask them to ascertain for us the views of their non-officials.

*(Several members expressed assent.)*

Sir T. B. SAPRU—I would like the official view as well. On the assumption that we are having a federation, how would they like to be linked up with the constitution?

Sir A. P. PATRO—In other words, the proposals in para. 83, how they propose those should be implemented.

CHAIRMAN—We can send those two points to the Commissioners and ask them to send us official and non-official opinions on them.

Dr. S. A. KHAN—One more point in the case of Ajmer Merwara. The proposal may be made—I am going to make it—that it should be amalgamated with the U.P. So the third point is whether some of these areas should be transferred to the provinces.

Sir C. P. RAMASWAMI AIYER—May we ask Mr. Dunnett what the Reforms Officer’s view was in regard to this item?

*(At the request of the Chairman Mr. Dunnett addressed the Committee.)*

Mr. DUNNETT—In regard to the centrally administered areas, sir, we did not think that the Committee would want to go into the many

details involved, including the financial position and the difficulties in setting them up. Nor, to be frank, did we think that the expression of views for the last two or three years, or longer, particularly in the case of Ajmer Merwara, would seem to the Committee to be so insufficient that the process of eliciting official and unofficial opinion would have to be undertaken again. In the case of Delhi, for instance, the subject has been very much debated. The Simon Commission took evidence. After that, as delegates are aware, there was much activity. In fact, I think a Delhi League was formed; a detailed scheme was drawn up in which at least a large finger of the Editor of the *Hindustan Times* appeared, and that was broadcasted. The opinions of Government are on record. And then, of course, it branched off into the big discussion about dismembering the Punjab and the U.P. and setting up a province consisting of two divisions of the one with two divisions of the other, and so on. So the material up to the Simon Commission inquiry was considerable, and since the Commission inquired there has been a good deal more material added and I think, in most cases, the expression of views has been pretty full. The Ajmer Merwara case was fully debated several years ago, and it was found that the only province to which it could be attached was the U.P., and my own recollection is that that was debated in the U.P. Legislative Council. In regard to your question as to what we thought would be your line of discussion, that is an indication of the line which we did not think that the Committee would wish to follow. The line which we thought the Committee would wish to follow—the Delhi case is separate—the big case is, is the Federal Government going to have its own enclave, including the City, and is it going to run its own show? But for the other, we thought the Committee might say: “We know that at present we cannot set up autonomous provinces, but their fate must ultimately be to rule themselves unless they go into some existing province; therefore, can we say that the future they will attain is autonomy and can we make in our constitution a provision similar to that in other constitutions by which in their own time they can attain autonomy?” That is to say, we thought that for these areas, excluding Delhi, the first question would be, what is to be their ultimate fate? and we thought the Committee would say “autonomy.” Secondly, we thought the Committee would consider the machinery, the provisions in the constitution by which they would attain that status. Then we thought that the Committee would say, “in the meantime what is going to happen? Are these areas, until they can stand on their own feet, to be centrally or federally administered?” We thought the Committee might wish to proceed on these lines, but we did not think they would go into the individual case. The material in each case is considerable and we thought the Committee might reach decisions on the broad lines I have indicated.

Sir C. P. RAMASWAMI AIYER—After hearing Mr. Dunnett I feel that it is possible that, subsequent to the scrutiny of the material, we may possibly take the line that has been indicated as a possible line. But before I commit myself I should like to have the material summarised. If it is considerable we can probably get all the material we want.

CHAIRMAN—Very well, gentlemen, we will postpone this till the 2nd May, and we will have this information circulated.

*The Committee then adjourned till 10.30 a.m. on Saturday,  
5th March, 1932.*

Mr. Jayakar made a request that inquiry might, in the interval, be made from the Prime Minister as to whether they could discuss the starred subjects in Circular No. 1 when they met in Simla in May.

PROCEEDINGS OF THE CONSULTATIVE COMMITTEE OF THE  
ROUND TABLE CONFERENCE AT A MEETING HELD IN THE  
COMMITTEE ROOM IN THE VICEROY'S HOUSE, NEW DELHI,  
AT 10.30 A.M., ON SATURDAY, THE 5TH MARCH, 1932.

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*Present :* THE HONOURABLE SIR HENRY MONCRIEFF-SMITH (*Vice-Chairman*).

*Members :* THE RAJA OF SARILA, RAO BAHADUR V. T. KRISHNAMACHARI, NAWAB LIAQAT HAYAT KHAN, SIR MANUBHAI MEHTA, NAWAB SIR MUHAMMAD AKBAR HYDARI, SIR MIRZA MUHAMMAD ISMAIL, MR. E. C. BENTHALL, MR. A. H. GHUZNAVI, MR. M. R. JAYAKAR, MR. N. M. JOSHI, DR. B. S. MOONJE, SIR A. P. PATRO, SIR C. P. RAMASWAMI AIYER, SIR TEJ BAHADUR SAPRU, DR. SHAFAT AHMED KHAN, RAO BAHADUR SRINIVASAN, SARDAR SAHIB SARDAR UJJAL SINGH, AND MR. ZAFARULLAH KHAN.

*Secretaries :* MESSRS. A. LATIFI and B. RAMA RAU.

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DEPUTY CHAIRMAN—Gentlemen, His Excellency regrets he is unable to be present to-day. We have only one subject for discussion this morning, namely, Railway jurisdiction in States territories. A mass of papers were circulated last night. I am not quite sure which is the best way of tackling this subject, but I would invite attention to Appendix A which is right at the end of the papers circulated. There is nothing on the paper to show where it is taken from, but it is actually an extract from the Butler Committee's report. It might possibly be a good starting point for discussion. (The Deputy Chairman then read out Appendix A, paras. 90 to 92).

SIR MANUBHAI MEHTA—Sir, this question of retrocession of jurisdiction over lands ceded for railway purposes has been engaging the attention of the Indian States for over 12 years that I know of. I have had opportunities of discussing the question several times with the Political, Police, and Legislative Depts. of the Government of India. I have also given as an appendix to my note the opinion of Sir Lancelot Graham. Originally the Indian States were allowed to retain jurisdiction over lands traversed by isolated local lines. In Baroda there are all sorts of railways. There are isolated local lines over which from the first jurisdiction was allowed to be retained by the State. There are equally other isolated local lines, entirely running from end to end in Baroda territory, over which the Baroda State was not allowed to retain jurisdiction because they were linked at one end with a line which was considered to be a trunk line, though it is not entirely within State territory. Thirdly, there are lines connected at one end to a British territory line and at the other end to another State line. Over these lines also the Baroda State was not allowed to retain jurisdiction. Then comes a fourth category of lines in Kathiawar. The lines run entirely within Baroda territory from end to end. They (illegible) isolated local lines and yet the Baroda State was not allowed any jurisdiction. All these anomalies were brought to the notice of the Government of India from time to time. The officers of the

Government of India said they had no desire to retain any fiscal jurisdiction over the lines at all, but this was merely a declaration by the Political Department. The Railway Department gave out lands given for railway purposes, for farming, the growth of fodder and for agricultural purposes and revenue was raised. Some of the lands were given out for petroleum installations and revenues were raised and they were not handed over to the States. Protests were made from time to time by the States that when criminal jurisdiction was given, it was never intended that fiscal jurisdiction would also be given, and the Political Department admitted that fiscal jurisdiction was never intended to be given. Similarly, there was no cession of civil jurisdiction at all, and yet when suits were filed against a State, they were claimed to be tried in courts situated in British India. The first case in which the claim of the States was asserted was in the Madras High Court case that arose in connection with the Hyderabad Railway. It is a very well known Hyderabad case of Yusufdin.

Sir TEJ BAHADUR SAPRU—Yusufdin was really arrested in Simla. The case was not decided by the Madras High Court. Calcutta I believe.

Sir MANUBHAI MEHTA—It may be Calcutta. One British High Court said that these lands were ceded for railway purposes only and therefore British India had no jurisdiction over these lands. The law laid down did not suit the Political Department, and so the practice was changed. The States were made to give a declaration in writing that the jurisdiction for criminal and other purposes belonged to the British Government. When this matter was discussed with the Railway and Political Departments in 1922, we submitted a long note. Sir Lancelot Grahame was present when the matter was discussed again in 1923. He said that there would be so many cases of thefts and other offences occurring in trains and people would be flying from one jurisdiction to another that it would be impossible to arrest them. He went to the length of saying that thefts and other offences occurring in running trains might be regarded as having occurred in British India and that running trains may be regarded as British territory. He said they wanted to apply the analogy of hot pursuit. If a criminal was flying through Indian State territory, British police can follow him in hot pursuit and this would not be regarded as any violation of State territory. So, the States conceded that running trains may be regarded as British territory; but if the train was at a standstill at a station, and if a man was to be arrested, why not seek the assistance of the State police?

All this was represented to the Political Department and Col. Ogilvie, Officiating Political Secretary at that time, laid down that on certain lines they never wanted fiscal jurisdiction, but on main strategic lines and through trunk lines civil and criminal jurisdiction may be retained, but on isolated lines, and on State owned lines and State worked lines, jurisdiction may be handed back. I do not see the relevance of the State working a line in order to retain jurisdiction. If the State owns it, if it has an independent judiciary there is no reason why the State should be denied its right of jurisdiction. It was also proposed that the State should agree to the inspection of the lines and to the investigation of accidents. All that was agreed to because the States are subject to a certain control of the Railway Board. In 1923 Colonel Ogilvie did not go beyond what the Butler Committee has now conceded in 1929. After 1923 there was an advance made. In the Appendix I have given the proceedings of a meeting in which Mr. Coupland of the Police Department and Sir John Thompson



said that as an experiment they could give back criminal jurisdiction to important States like Mysore, Hyderabad, Baroda or Gwalior. When appreciable lengths of railway line, say 50 or 70 miles, run through State territory, there is no reason why the State should not be entrusted with jurisdiction. The same rights need not be given to petty States which cannot maintain their own judiciary. As these are matters which are governed by treaties, I appeal to the Paramount Power to modify the treaties. The Butler Committee were prepared to go only as far as the 1923 declaration but no further. I have brought this question up in order to have this point elucidated. There is not in any other federation any semblance of one State exercising jurisdiction over the lands of another State. It does not exist in Australia, America or any other federation. In the official note circulated to-day there is a suggestion whether the easement rights analogy would apply. I can only say that this suggestion never entered the ingenious brain of Sir Lancelot Graham or any other judicial officer or lawyer. An easement is created when there is an adverse right. As the legal maxim says, neither by force nor by secrecy nor by concession can any easement be created. Then there is the question of devolution. It is asked, when all these rights devolve to the next Government, why not the treaties also? If we are entering into new relations with the new Government, we want the treaties to be clarified. These treaties are anomalous. The condition about efficient and independent judiciary is alright. On strategic lines the Indian States have always been willing to help the Government and place their resources at their disposal. The only difficulty to be apprehended is whether there would be proper justice. It is a question like any other extraditable offence. If a man is arrested at the station, why not allow him to be tried in the courts of the State where he was arrested? I am prepared to make an exception as to running trains because while a train is running it may be difficult to decide where he was arrested. Running trains may be regarded as British Indian soil. But where one is arrested on hard soil, at the station, there is no reason why the State should not retain jurisdiction over him. That is why I ask for the retrocession of jurisdiction on all these lands.

DEPUTY CHAIRMAN—I am not quite clear about running trains. If an offence is committed on a running train, I suppose in 19 cases out of 20 the arrest will be made when the train is at a standstill. If you would just summarise for us what you want, you want criminal jurisdiction . . .

Sir MANUBHAI MEHTA—I want retrocession of jurisdiction over all lines irrespective of whether they are State lines or are State owned lines or State worked lines. If they are local lines, all jurisdiction must be handed back.

DEPUTY CHAIRMAN—On strategic lines, through lines and trunk lines? Retrocession of jurisdiction—what kind of jurisdiction? All kinds of jurisdiction, civil, criminal and fiscal?

Sir MANUBHAI MEHTA—Only on strategic lines they say civil jurisdiction may be retained.

DEPUTY CHAIRMAN—You mentioned accidents.

Sir MANUBHAI MEHTA—We have said that accidents should be investigated by the Railway Board—the Federal Board.

Sir TEJ BAHADUR SAPRU—I should like to say a few words about this question. I have been reading the notes which have been supplied

by Sir Manubhai Mehta with great interest and also the note of Mr. (now Sir Lancelot) Graham. His note is dated 6th January, 1923. It was the result of a Conference between the Indian States and the Foreign Department of the Government of India over which I presided in my official capacity at that time and reference is made to me also in this note. Even at that time I thought that the question was full of intricate difficulties and required very, very careful consideration. Mr. Graham's note was written four days after my retirement, but it was the result of the consultation that took place at that time. Having read these notes carefully I still continue to think that the question is more difficult from the technical and legal point of view than we imagine. It will involve a very very careful examination of the criminal and civil law. Questions of jurisdiction arise almost every day in these cases in the High Courts and I have known of cases in which very eminent judges have differed over the question of jurisdiction. Cases may arise giving rise to a claim for damages in a tort, or cases may arise relating to a contract. Even in British India one cannot be sure of which court has jurisdiction. Similarly also in regard to criminal law. I personally think that the most satisfactory way of dealing with this question would be to frame definite issues in which both Indian States and British India are concerned, and these issues have to be framed now from a somewhat different point of view, because when these discussions took place, there was no talk of Federation. Now we have to adjust our future law to a federal system. It would be extremely difficult for some of us on this side, lawyers, to commit ourselves to any difficult decision unless the position has been carefully examined in detail with reference to the Civil Procedure Code, the Criminal Procedure Code, and certain provisions of the law of contract and torts and also of the Railway Act. We understand the desire of the Indian States. I do not say that it is illegitimate. It seems to me perfectly legitimate. By illegitimate I mean on political grounds. How to give effect to it consistently with the statutory enactments in India and how far any solution of it will be consistent with practical consideration of administration are questions which seem to me to require very careful consideration.

I was therefore going to suggest that the question should be referred to a small Committee consisting of the legal element and the Indian States, who should submit a report to this Committee after a careful examination of the whole question. I am not prepared to commit myself to any decision until I know the position exactly in regard to jurisdiction.

Sir MANUBHAI MEHTA—In federal suits there will be appeals . . .

Sir TEJ BAHADUR SAPRU—That is a question we have got to consider. If a civil suit lies at the instance of a private party against the company in the court of an Indian State, what would be the appeal that you would provide and to whom would that appeal lie ?

Sir MANUBHAI MEHTA—It will be to the Federal Court.

Sir TEJ BAHADUR SAPRU—All these questions have got to be carefully determined.

Sir C. P. RAMASWAMI AYYER—It is a question of the reconciliation of the practical aspects of the matter with the claims of the Indian States. I sympathise fully with the claims of the States, but I can visualise one or two difficulties which cannot be got over so easily. The more I look

into this, the more I consider the cases which have recently been decided, the less sure I am of the basic ground. So I should like the whole question to be carefully considered.

RAO BAHADUR V. T. KRISHNAMACHARI—It is generally agreed that we shall have to regard this question from a different point of view. Now in view of this idea of federation and probably even for other purposes, it will be necessary to constitute certain courts in Indian States as federal courts and when that comes about, railway jurisdiction will automatically be vested in those courts. As regards police and other arrangements, there will have to be co-operation between the Federal Court and Indian States and if certain courts in Indian States are recognised as Federal Courts there will be appeal, I suppose, to the Central Federal Court so that the risk of courts in different States interpreting, say, the Railway Act differently will be obviated.

Sir C. P. RAMASWAMI AIYER—That is not my difficulty so much as defining the kind of suit in which the Federal Court will have jurisdiction.

RAO BAHADUR V. T. KRISHNAMACHARI—The main point is the whole question has to be worked out from a different point of view altogether. Starting from the main principle that there can be no differentiation between a province and an Indian State in respect of railway jurisdiction we want the whole question investigated from a different angle. That point of view has not prevailed in the past because circumstances were different. With this idea of federation we shall have to work out a different set of relations altogether. It would be a very good idea for a small sub-committee to try and work out at least the main line of the future arrangements.

Sir TEJ BAHADUR SAPRU—May I raise one point about which I had a discussion with Sir Maurice Gwyer just now? The point so far as it relates to jurisdiction was considered by a Sub-Committee which was appointed by the Lord Chancellor and which sat in the Lord Chancellor's room in the House of Lords and that was in connection with the Supreme Court and the Federal Court. We were then of opinion that for certain purposes it would be necessary to vest the courts in Indian States with federal jurisdiction so as to allow appeals and to allow further decisions to the Federal Court. That question is intimately to my mind connected with the jurisdiction over railways. Therefore we cannot take that quite apart from that question. Of course no definite conclusions were arrived at at that time, but that was the general opinion. The Committee which sat consisted of men like Sir Mohd. Shafi, Sir C. P. Ramaswami Aiyer, Mr. Jayakar, Mr. Jinnah, Sir Edward Chamier, Sir Maurice Gwyer and myself. It is for that reason that this question of railway jurisdiction in its relation with the Federal constitution and Federal Courts must be considered. It cannot be considered by itself.

Mr. M. R. JAYAKAR—I support the suggestion of Sir Tej Bahadur Sapru and also of Sir C. P. Ramaswami Aiyer and the more I look into it the more difficult the question seems to me. I take the case, Sir, where the law of contract, the law of the Federal Court, etc., are involved. I am giving only one instance. I purchase a ticket at Jodhpur and thereby make a contract with the railway for my safe carriage on their line. I travel for a part of the journey and enter the territory belonging to Jaipur. Supposing an accident takes place there and supposing I travel along and get down, say, in the territory of Baroda. My contract for safe carriage takes place with the railway as soon as I purchase the ticket and the breach of contract

takes place in the territory of Jaipur and I get down in the territory of Baroda. Supposing the matter is further complicated with the breach of the law—I am complicating it purposely—the question will arise in the court of what particular State is this case of breach of contract going to be tried? I am pointing out the difficulties and all these questions will have to be considered.

Sir MANUBHAI MEHTA—These difficulties can be overcome.

Mr. M. R. JAYAKAR—I agree with you but I am only pointing out the great complexity of the question and I completely appreciate what the State representatives have said and I do support in that connection the suggestion made by Sir Tej Bahadur Sapru that this question will have to be considered by a small committee and that committee should go into the question and report as early as possible.

Sir MANUBHAI MEHTA—As Mr. Jayakar has said there are difficulties but they are not insoluble difficulties. In the case of crimes even in the existing Criminal Procedure Code you will find that the court leaves it to the option to try the case either at the place of original offence or at the place the man is arrested or in the same way alternative jurisdiction can be given to different places or different courts. I do not say it is not an insoluble difficulty.

Sir MIRZA MOHD. ISMAIL—May I say a word on this subject? I think the best course would be to appoint a special committee to study the whole question and lay down certain general principles in regard to the application of the criminal, civil, and also fiscal laws and to see how far they can be applied to each State. I think there are States in which there should be absolutely no difficulty, legal or practical, in handing over jurisdiction to States. Take the case of Mysore. There is a railway line from Harihar to Mysore. Half that line is owned by the State and worked by the State. No question as regards jurisdiction has arisen so far. Criminal, fiscal and every kind of jurisdiction is in the hands of the State authorities. Then there is another section—the other half from Harihar up to Bangalore which is although owned by the State is being worked by the company for a temporary period. Government have appropriated not only criminal and civil jurisdiction but also appropriated fiscal jurisdiction over it. We were getting for two or three years income tax on the earnings of the railway company on that line, but somehow subsequently the Government of India took into their heads that they were entitled to this income tax and they appropriated it ever since. That is what Government of India have done in regard to criminal, civil and fiscal jurisdiction.

Sir C. P. RAMASWAMI AIYER—Even assuming the Federation comes into existence, there are fiscal regulations for breaches of fiscal laws.

Sir MIRZA MOHD. ISMAIL—That is a matter for settlement.

Sir MANUBHAI MEHTA—Breaches could be criminal under fiscal law.

Sir MIRZA MOHD. ISMAIL—I think on the whole that a sub-committee should be appointed.

RAO BAHADUR V. T. KRISHNAMACHARI—I think that is a very good way.

DEPUTY CHAIRMAN—I should like to hear the views of non-lawyer members.

Mr. N. M. JOSHI—Although I am not against the appointment of a sub-committee to consider this question, I feel some difficulty in agreeing to the proposal that railway jurisdiction over railways be given back to Indian States. The difficulty, in my humble opinion, will come on account of the laws in British India and Indian States not being the same. I am interested in certain laws. Take the law of Workmen's Compensation. If an accident takes place on a line which passes through an Indian State, the State not having the same Compensation law, the man will either get nothing at all or will get less compensation.

Sir MANUBHAI MEHTA—What will he get at present?

Mr. N. M. JOSHI—At present he can get . . . . (*interruption*).

Sir C. P. RAMASWAMI Aiyer—That illustrates the difficulty. It is a common law right.

Mr. N. M. JOSHI—This is not a common law right. It is a right given by legislation. I shall give you another instance. Suppose we have a law regulating the hours of work of railway men and a railway passes through an Indian territory. As soon as the man enters the territory of the State if the jurisdiction over the railway is ceded to Indian States that man will not get the benefit of that law regulating the hours of work. I therefore feel that unless the laws, criminal and civil, are the same between India States and British India, the British Indian subjects passing through these railways or the British Indians working on these lines or all railway employees will be under a disadvantage. I therefore think that, so far as I can judge the question at present, there are serious difficulties in the way of our handing over the jurisdiction of that territory which is occupied by the railways, but I am not against the appointment of the Committee. The Committee will have to consider whether the laws in British India are the same, the laws in British India and States are the same or at least the laws in Indian States are not worse compared with the laws in British India, and also that the labour laws between British India and Indian States are the same. It is for that reason that in London I pressed that "labour" should be made a federal subject, so that people who are working on these undertakings should get the benefit of Federal Legislation. I therefore think that there are serious difficulties in the way of agreeing to the proposal of Sir Manubhai Mehta.

Nawab LIAQAT HYAT KHAN—Supposing, Mr. Joshi, certain Indian States pass a labour law which is much more favourable to labour than the British Indian law, would you then force the Federal Legislature to pass a similar law in British India?

Mr. N. M. JOSHI—There is absolutely no likelihood of any such contingency arising. Should, however, any such thing happen we shall consider then.

DEPUTY CHAIRMAN—May I take it that the proposal regarding the appointment of a sub-committee is agreed?

Dr. SHAFAT AHMED KHAN—While I agree to the retrocession of jurisdiction, I do not want to say anything just at present, but when I see the report of the Committee I shall be able to come to a definite conclusion.

DEPUTY CHAIRMAN—The whole matter will be subject to discussion when the sub-committee has reported. Let us appoint a sub-committee.

Sir TEJ BAHADUR SAPRU—There must be representatives of Indian States.

Sir MANUBHAI MEHTA—This question, which arose at the time of Montagu-Chelmsford reforms, is still being considered by us and we have not advanced further. It is a question really between the States and Paramount power. I do not object to the committee at all.

SIR TEJ BAHADUR SAPRU—His Excellency may choose the committee.

RAO BAHADUR V. T. KRISHNAMACHARI—Sir Manubhai Mehta will represent Indian States.

Sir MANUBHAI MEHTA—That is a heritage which comes to me even from pre-Montford reforms.

Sir TEJ BAHADUR SAPRU—This Committee is supposed to meet in May? When the main Committee meets in Simla we can spare a few hours every evening.

DEPUTY CHAIRMAN—I agree, if the sub-committee does not encroach too much on the working of the main Committee.

Sir TEJ BAHADUR SAPRU—I think we shall find time then.

Sir MIRZA MOHD. ISMAIL—We want suggestions from the British India side, too.

Sir C. P. RAMASWAMI AIYER—Sir Tej Bahadur Sapru should be on the Committee.

Sir TEJ BAHADUR SAPRU—In addition I propose Sir C. P. Ramaswami Aiyer and Mr. Jayakar.

Sir A. P. PATRO—Mr. Joshi cannot be omitted. He will put the point of view of labour.

Sir TEJ BAHADUR SAPRU—Mr. Zafarullah Khan should also be there.

Mr. ZAFARULLAH KHAN—I have no objection, I shall certainly be there for some time.

Sir A. P. PATRO—Mr. Zafarullah and Mr. Joshi?

Mr. N. M. JOSHI—I am not anxious, because I do not understand the law.

Nawab LIAQAT HYAT KHAN—I propose Sir Tej Bahadur Sapru and Sir C. P. Ramaswami Aiyer and two representatives from Indian States.

Sir A. P. PATRO—Then you will have more members representing Indian States—Sir C. P. Ramaswami Aiyer represents also a State.

Sir C. P. RAMASWAMI AIYER—In that sense Sir Tej Bahadur Sapru and myself have advised most of the States in Northern India.

DEPUTY CHAIRMAN—That, gentlemen, is all. We meet on 2nd May.

Sir C. P. RAMASWAMI AIYER—I think it is understood—I do not want to commit you to anything—that when we meet on the 2nd May we go on *de die in diem* until we finish the whole thing.

DEPUTY CHAIRMAN—Yes, I think so.

Sir MIRZA MOHD. ISMAIL—Who will be the Chairman of this Committee?

DEPUTY CHAIRMAN—I think we might leave it for the present. His Excellency will decide this.

Sir MANUBHAI MEHTA—There are four or five items in the list of federal and provincial subjects which we have left over.

Sir C. P. RAMASWAMI AIYER—We have not yet received the memoranda on these subjects.

Sir A. P. PATRO—We can take them up when we get the memoranda.

DEPUTY CHAIRMAN—There is a suggestion with regard to additional agenda. If members have got any suggestions regarding this I hope they will send them either to the Private Secretary to His Excellency the Viceroy or to one of our Secretaries in time.

Mr N. M. JOSHI—What is to be the future programme of work for the Federal Structure Committee of the Round Table Conference?

Sir C P RAMASWAMI AIYER—It all depends upon us.

Mr. E. C. BENTHALL—What is the position as regards the Boundaries Commission? It was suggested that there should be a Boundaries Commission at the Round Table Conference. I think the question was discussed at the Round Table Conference.

Dr SHATAAT AHMED KHAN—That was not discussed at the Round Table Conference. I believe the Simon Commission suggested it.

Mr ZAFARULLAH KHAN—For what purpose?

Mr E. C BENTHALL—To review the question of boundaries in general.

Sir TEJ BAHADUR SAPRU—Orissa is being enquired into by Sir Samuel O'Donnell. He has come out from England specially for the purpose.

Mr. E. C. BENTHALL—It is not contemplated that there should be any other committee. I am only seeking information on the point.

Sir TEJ BAHADUR SAPRU—Sufficient unto the day is the evil thereof.

Mr. N. M. JOSHI—There was a demand from the Andhra Province.

Sir A. P. PATRO—God save us from more of this kind.

Mr. N. M. JOSHI—What has happened to the decision on the communal question? We expressed a desire that the communal question should be settled soon.

DEPUTY CHAIRMAN—I think His Excellency told you the other day what the position was.

I wish good-bye to you.

## APPENDIX I.

## MEMORANDUM ON THE STATUTORY CONTROL OF RAILWAYS.

BY BRIG.-GEN. F. D. HAMMOND, C.B.E., D.S.O.

4, Dean's Yard,

Westminster, S.W.1.

*August 5th, 1931.*

Sir,

I have the honour to forward this memorandum, which I have prepared in accordance with the instructions contained in your letter P. & L. (C) 607 of the 25th June, 1931.

2. That letter instructed me to prepare a "memorandum showing the advantages and disadvantages to be expected from the establishment in India of a Statutory Railway Authority as a feature in the proposed Federal Constitution."

3. The duty required of me was more fully explained in a letter from Sir Louis Kershaw, K.C.S.I., C.I.E., in which I was asked to set out in the memorandum "the practice in other countries, foreign and Dominion, where there is a state railway system, including both those which have a Statutory Authority and those which have not, and the advantages and disadvantages to be expected from the establishment of a Statutory Authority, as indicated by experience in other countries, stated from the technical and not from the political point of view." I was further asked to offer my views, so far as I might be in a position to do so, on the application to the special conditions of India of the experience of other countries, both as those conditions are at present and as they would be under the federal constitution now contemplated, including my ideas as to any special provisions that might be required for Company-managed and Indian State railways.

4. The countries with which I deal in this memorandum are :—

Canada.  
 Union of South Africa.  
 Germany.  
 Belgium.  
 France.  
 Argentine Republic.  
 Australia.  
 New Zealand.  
 Switzerland.  
 United States of America.  
 Great Britain.

5. Choice in these questions is always difficult, but I have endeavoured in this case not merely to give instances which are representative, but also to include all the more important countries which have introduced legislation on railway control during recent years. I have included the United States and Great Britain because, although in neither country are the railways state-owned, useful experience may be gained from their legislation.



6. In all cases where recent legislation has been introduced I have described the organisation at considerable length so that the details may be available for reference, if it should be decided to take any action.

#### CANADA.

7. Before the War the railway policy of Canada was essentially in favour of private ownership and management, although State and Provincial aid had been given in many cases to help construction. Out of 26,727 miles of railway in the Dominion only some 2,000 miles were owned by the Government, and these had been built as part of the bargain struck with the Maritime Provinces at the time of confederation. There was no marked movement towards state ownership and the Intercolonial was constantly held up as an example of the bad results to be expected from state ownership and management as opposed to the fine results obtained by the Canadian Pacific Railway, both financially and in the way of development. In addition to the Canadian Pacific Railway, the principal privately-owned systems were the Grand Trunk, with its subsidiary, the Grand Trunk Pacific, and the Canadian Northern.

8. During the war these two last-named systems got into grave financial difficulties and a Royal Commission was appointed to investigate the whole situation, particularly in view of the large guarantees given by the Dominion and Provincial Governments. The principal recommendations of the Commission in the Report which it made in 1917 were that these undertakings were unable to maintain an independent existence and that they should be transferred to the Government, which alone could carry the burden. The Commission examined and rejected the solution of Government operation under a Minister responsible to Parliament on the grounds that it would not give better service or rates, that if the Government operated these systems it should, in fairness, take over the Canadian Pacific Railway also, whilst the latter gave good service and should not be interfered with, and that 7,000 miles of line owned by Canadian companies in the United States of America were subject to the foreign jurisdiction of that Government. They recommended, accordingly, that a new public authority, a Board of Trustees, should be formed to which the Canadian Northern, the Grand Trunk, the Grand Trunk Pacific, the Intercolonial and the National Transcontinental Railways should be transferred, and by which they would be operated as a united system on a commercial basis, that the Government should assume responsibility to this new authority for the interest on the existing securities of all these undertakings and, finally, the Commission laid stress on the point that this Board of Trustees should be non-political, permanent and self-perpetuating. These recommendations were not unanimous, one member of the Commission of three dissenting.

9. The Canadian National Railways were finally formed and into it at various times were absorbed the Canadian Northern, the Grand Trunk, the Grand Trunk Pacific, the Intercolonial and the National Transcontinental systems. Thus, excluding a few smaller lines like the Pacific Great Eastern in British Columbia, the railways of Canada are now divided between two big corporations, the Canadian National Railway Company, which is state-owned, and the Canadian Pacific Railway Company, which is privately owned.

10. The constitution of the Canadian National Railways did not follow the lines proposed by the Royal Commission. The principle of forming a company was maintained, but, in place of a Board of Trustees, non-political, permanent, and self-perpetuating, subject only to the approval of the Government to nomination, the act constituting the company provided for a Board of Directors. These Directors are nominated by the Governor in Council and may not be less than five nor more than fifteen in number. They hold office from one annual meeting to another or until their successors are appointed, unless removed by the Governor in Council for cause.

11. The highest executive officer is called, following the American practice and that recently adopted on the London Midland and Scottish Railway, President, and he is also Chairman of the Board. He is assisted by Vice-Presidents in charge of the various departments of the Railway, and of these the Vice-President in charge of legal affairs sits on the Board and acts as Vice-Chairman of it. In addition the Deputy Minister of Railways and Canals, who is a civil servant and the permanent head of the staff of the Ministry, also sits on the Board. These three may be called the permanent members. The other members of the Board are appointed by the Government in power ; thus, at the last General Election when the Conservatives came into office they asked for the resignation of the whole Board with the exception of the three whom I have called the permanent members.

12. The estimates are placed before the Board and approved by them. They are then presented to the Minister of Railways and Canals. The Minister is already aware of their main provisions owing to the presence of his Deputy Minister on the Board. Finally, they are presented to Parliament and are examined in detail in Special Committee.

13. The deficit on the results of the year has to be paid out of the Consolidated Revenue Fund. That there have been deficits is not to be wondered at. Although no compensation had to be paid for the common and preference stocks of the Grand Trunk, of the other systems incorporated the Canadian Northern at the time of taking over could not earn enough to pay operating expenses and fixed charges, the Grand Trunk Pacific could not pay operating expenses, both it and the Canadian Northern needed new equipment, the Intercolonial had never been able to do more than pay operating expenses and the National Transcontinental had also operating deficits due to insufficient traffic.

These railways had never been built with a view to forming one system and in many places were duplicated and formerly in competition. The mere fact that they have been merged into one system, while it might effect economies, could not increase traffics, which were what the lines stood most in need of. The railways had been developed in fact far in advance of the country and its traffic and merging the less prosperous ones into a single system could not remedy the over-building.

14. Politics have always entered largely into Canadian railway policy, the Canadian Pacific Railway being regarded as the protégé of the Conservative party and the Grand Trunk of the Liberal, and it cannot be said that, despite the efforts of the President and Vice-Presidents, they have even now been eliminated from certain phases of railway policy, more particularly in respect of new lines. The Canadian Press gives plenty of evidence to the contrary, but great strides have been made in this

direction and the President has undoubtedly welded this heterogeneous collection into one corporate body and, besides giving an admirable service to the country, has inspired this body with a remarkable *esprit de corps*. It is thus rather difficult to judge the organisation, to judge how far the success which it has attained has been due to the man and how much to the system, and how it will succeed when the man has gone and when the initial momentum which he has imparted to the machine has died down.

15. The organisation appears to retain one of the bad features of direct management under a Minister. The severe criticisms to which, at the time of writing, the estimates are being submitted in Special Committee seem, to judge from press accounts, to include subjects which are essentially those of management rather than of policy, though it was always difficult to lay down a hard and fast rule as to where policy ends and management begins.

16. Politics have, however, been eliminated nearly entirely from one of the most important questions, that of rates, the control of which is in the hands of the Board of Railway Commissioners. Rates, whether for national or privately owned railways, are under the sole jurisdiction of this body. It is the Canadian counterpart of the Interstate Commerce Commission in the United States. The Act incorporating the Canadian National Railway Company provided that the Act of 1919 establishing the Board of Railway Commissioners should apply to that Company except as regards those provisions relating to the location of lines of railways and the making and filing of plans and profiles. Thus in matters of rates and safety the Canadian National Railways are on the same footing as the Canadian Pacific Railway.

17. The Board of Railway Commissioners is composed of 6 members, appointed for a term of 10 years by the Governor in Council. They may be removed at any time by the Governor in Council upon address by the Senate and House of Commons. They are eligible for re-appointment, but cease to hold office upon reaching the age of 75. One of them is appointed by the Governor in Council Chief Commissioner and another Assistant Chief Commissioner, and these must be or have been either judges of a superior court or lawyers of at least 10 years' standing. No special qualifications are laid down for the other Commissioners. The Chief Commissioner receives a salary of \$12,500 a year, the Assistant Chief Commissioner \$9,000, and each of the other Commissioners \$8,000 a year.

18. The Board has full jurisdiction to hear and determine all matters, whether of law or of fact, and has the full powers, rights and privileges of a superior court. It can enquire, not only into matters brought before it by parties, but also of its own motion can enquire into and determine matters provided for under the Railway Act of 1919 establishing it. At the request of the Minister of Railways and Canals it shall also enquire into and determine similar matters. These are very wide and include all phases of rates, safety, accounts, stocks and debenture issues and many matters similar to those which would be included in England in the bye-laws of a railway company.

Any decision or order of the Board may be made by the Board a rule of the Exchequer Court and it may fix penalties, when not already provided in the Act, for offences against any regulation or order made by it.

An appeal lies from the Board to the Supreme Court only on a question of jurisdiction, but an appeal can also lie by leave of the Board on a question of law.

The Governor in Council may at any time vary or rescind an order or decision of the Board, but such power, I am informed, has been rarely if ever, used.

The Act provides in full for the legislation governing railway companies on such points as issue of shares, calls, meetings of shareholders, appointment and powers of directors and payment of dividends which in this country are governed by the Companies Act.

All plans and profiles of new lines must be approved by it and it inspects and gives permission to open for traffic.

It can go further and order a line to be opened and issue an order to a railway company to build and operate a spur not more than 6 miles long to an industry where the industry and the railway company have not been able to come to terms. In this case it lays down the terms for operation. Pooling of traffic is prohibited without its approval. Thus it will be seen that, quite apart from the questions of rates, its powers are very extensive.

19. In the matter of rates and fares it decides all questions of preferential treatment and discrimination and prescribes the classification, which is uniform throughout Canada. Conditions of carriage must be approved by it.

Finally it is the duty of the Board in the words of the Act to "fix, determine, to enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require." This power is not limited by any Act of the Parliament of Canada, provided that rates on grain and flour shall from a certain prescribed date be governed by the agreement of 1897 between the Government of Canada and the Canadian Pacific Railway, known as the Crow's Nest Pass Agreement.

The railways in the first place present their tariffs for the approval of the Board but the latter may initiate and enforce such changes in the tariff as it thinks desirable.

All rates whether special, standard or competitive, the three classes into which rates are divided in the Act, must be made public and a copy must be open to inspection by any one during office hours.

The Crow's Nest Pass Agreement provided that in consideration of approximately three million dollars received from the Canadian Government, the Canadian Pacific Railway was to extend its line westward in the Crow's Nest Pass territory and to maintain for ever on grain and flour reduced rates which were specified in the Agreement. Apart from a few years after the war when they were allowed to be raised, the rates for the movement of grain and flour both east and west have been fixed by this agreement.

20. An interesting feature in this machinery for fixing rates is that, unlike the British and American Acts, where certain revenues or percentages were laid down as the standard by which rates were to be judged, the Canadian Act took the existing rates as the basis and laid down as the standard whereby these and any subsequent changes therein were to be judged that they were to be just and reasonable bearing in

mind changing conditions and the cost to the railway of effecting the service.

While, as in the case of any similar tribunal, the decisions of the Board have not always met with universal approval, it can be claimed that this machinery has proved at least as efficient, whether judged from the point of view of the country or of the railways, as the tribunals elsewhere with their rather elaborate "yard-sticks" and is certainly more flexible and quicker in action.

The Board enjoys a high reputation and has been remarkably free from political influence, more particularly when it is remembered that new appointments have been made from the ranks of the political party in power. The reason appears to lie in the length of the term of service. When a man accepts so long a term of service as 10 years it means resigning all political aspirations, and at the end of that time he has little to hope for from his party. Also the length of the term ensures that there is a fair distribution of the Board between the two parties.

#### THE UNION OF SOUTH AFRICA.

21. The South Africa Act of 1909, which established the constitution of the Union of South Africa, laid down that "all ports, harbours and railways belonging to the several Colonies at the establishment of the Union shall vest in the Governor General in Council," that "subject to the authority of the Governor General in Council, the control and management of the railways, ports and harbours of the Union shall be exercised through a board consisting of not more than three commissioners and a Minister of State who shall be chairman. Each commissioner shall hold office for a period of 5 years, but may be re-appointed." Further the Act laid down that "The railways, ports and harbours of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion by means of cheap transport, of the settlement of an agricultural and industrial population in the inland provinces of the Union." Further provisions were made to ensure that the finances of the Railways should be completely separated from those of the State, that the interest due on capital invested in the Railways should be paid over to the Consolidated Revenue Fund of the Union, and that the earnings of the Railways should be so regulated as to be not more than sufficient to make the Railways self-supporting. Finally it laid down that if the Railways were required by the Government to provide any service gratuitously or at less than cost, or if any works or lines were constructed against the advice of the Railway Board and the Board considered that there would be insufficient revenue therefrom to meet working expenses and interest charges, the resulting loss as agreed to by the Controller and Auditor General should be paid from the Consolidated Revenue Fund to the Railway and Harbours Fund.

Seldom, if ever, can greater pains have been taken to draw up a constitution with the object of ensuring that the state-owned railways, while being directly state-managed and with the final control in the hands of the Parliament, should be run on business lines and free of political interference.

22. That the South African Railways have been managed, generally speaking, with conspicuous success cannot be denied, but accusations have frequently been made that in many respects their administration

has not followed business principles and it certainly cannot be said that it has been free of political interference. There is no single instance where payments have been made from the Consolidated Revenue Fund to the Railways on account of services given at less than cost or for losses on working branch lines.

It may be argued that the success which has been attained has been due in large measure to the strong personalities of the two able men who have filled the post of General Manager; that it is only owing to the exceptionally strong economic situation of South Africa and to the great developments which have taken place that the Railways have been able to depart in certain cases from business principles without impairing their financial position; that, in fact, a different picture would have been presented had there been a weak General Manager or if during the 20 years which followed Union South Africa had not enjoyed, on the whole, a uniform and remarkable prosperity.

23. Ever since the Constitution has been put into force there has been dispute as to the position of the Board of Commissioners. The Act laid down that the control and management should be exercised "through" the Board. The Government interpreted this as meaning that the Board was to be an advisory body, while the Board considered that the intention of the words was to make them directly responsible to Parliament. The point was finally settled by the Railway Board Act of 1916, which stated clearly that the Board was only to advise the Minister, and, though the Minister had to consult the Board, he could depart from their advice, the only check being that in that event he had to record his reasons for so doing and these would be reported to the next meeting of the Board and recorded in the Minutes. This Act also gave the Minister a casting vote which he did not possess before.

It is clear from reading the South Africa Act of 1909 that to place the Board in such an insignificant position as this was a wide departure from the intention of the framers of that Act. It places the Railways for all practical purposes in the old position of being administered by a General Manager directly responsible to a Minister, an organisation which had already been tried and found wanting in the older South African colonies before Union.

24. The organisation has other defects. Appointments are essentially matters of management and working rather than of policy. The final authority, in this case the Minister or the Board, has the right to lay down the policy to be followed in making appointments and also the right of approval or refusal. But it is essential to good management that the General Manager should initiate the recommendations for appointments, more particularly those for the higher posts, and the higher authority should only withhold its approval for the strongest reasons. But in South Africa appointments have been made by the Minister contrary to the recommendation of the General Manager and the status of posts has been altered without his having been consulted. Such acts inevitably impair the efficiency of management. It may be argued that acts such as these infringe the spirit, if not the letter, of the statutes establishing the railway administration, but, nevertheless, it affords another instance of the dangers of direct management under a Minister. He is in the position of being able to interpret the rules as he thinks desirable, or, it may be, to pass legislation to alter them as he requires. An excellent example of this is afforded by the law reducing the Railway Board in South Africa to a purely advisory capacity.

25. Besides these difficulties, both the Minister and the General Manager are sometimes placed in anomalous positions. The General Manager has to defend the policy of the Minister before the Select Committee of the Legislature. On such questions, for example, as the construction of a particular branch line, the views of the General Manager may be at variance with those of the Minister, but, once the line has been included in the Estimates, he must support his Minister and defend the project before the Select Committee. Similarly, the Minister must defend the General Manager in the House.

26. The main grounds upon which the Railways have been criticised as departing from business principles are in connection with the taking over of the line which was built for military reasons to connect up the South African railway system with South West Africa, with the adoption of the white unskilled labour policy, with the very low rates which it has given in order to establish internal as opposed to imported manufactured articles, and with the low rates given to agricultural exports and to livestock when drought stricken.

In the matter of low rates, while I am personally opposed to the use of railways as an instrument of protection, it must be admitted that quite a good case can be made out for granting low rates in order to foster the export of agricultural products and the development of home industry as well as to assist farmers in times of difficulty on the ground that it is to the interests of the railway to do so. The main dispute is as to the degree of assistance which should be given by the railways and Government respectively.

But it is difficult to see, in view of the clause of the Act regarding business principles, what justification there can be for saddling the railway finances with the annual loss of working a line built for purely military purposes or with the whole of the losses entailed by being forced to adopt the Government policy of employing the more expensive poor whites instead of natives. These are surely cases where the Railways should be indemnified under the clauses of the 1909 Act for the losses that they have incurred. In fact, the Railway Board did recommend that, at any rate, part of the loss on the working of the railways in South West Africa and those connecting therewith should be borne by the Consolidated Fund and their opinion was endorsed by successive Select Committees. The Controller and Auditor General reported to the same effect in strong terms. Nevertheless, the Railway Board eventually abandoned their position, and the South African Railways have had to bear the whole of the losses.

27. It is a significant fact that in no case have the Government been called on to make good losses on working branches, although, apart from the South West Africa case, it is common knowledge, supported by comments from previous Annual Reports, that many of the branches have been built for political rather than for railway reasons. The answer to this is that the Board has never, as required by the Act, definitely advised against the construction of any lines; in the South West Africa case the line was built during the War without their being consulted and, being war time, no estimates were prepared of the probable future results.

It is impossible to imagine that during the 21 years the South Africa Act has been in force, when the railway mileage has increased from 7,592 to over 12,000, the Board has seen eye to eye with the Government in the case of every branch line. The only deduction that can be drawn is that the Board has become, in this respect at any rate, entirely subservient to

the Minister and this is borne out by the fact that for a long time past the members of the Board have been political nominees of the party in power.

As expressed in the words of a well documented but distinctly hostile critic, Mr. S. H. Frankel, "Under the present system, a Minister of Railways (usually not a railway expert) represents the interests of the Government generally rather than those of railway transport, and a political Board ratifies his decisions, whilst the only expert representative of railway interests is the General Manager, already over-burdened with executive duties. Under such a system the Administration of the Railways on commercial principles becomes impossible."

28. The lessons which can be drawn from the experience of the South African Railways are, I think, that, apart from affording another instance of the objections to having a General Manager reporting direct to a Minister, who is usually bound to consider Government interests before railway ones, it is essential to define clearly the powers and responsibilities of any controlling body in order to minimise the danger of encroachment by the Minister on their functions, and to ensure that their powers are adequate. It is also well to define clearly the relationship of the General Manager or executive to that controlling body.

#### GERMANY.

29. The formation of the German State Railways into a Company was not a spontaneous movement of either the German Government or the German Railways. When the Dawes Committee was appointed in 1924 to examine the problem of reparations in Germany, one of its most important duties was to assess the amount of the reparation indemnities which could be paid by Germany. The largest asset of the German Reich was the State Railways. Before the War practically each individual state of the German Empire had owned its own railways. Shortly after the Armistice these smaller state railways were merged into one single undertaking. With the object of examining how this asset could be best utilised to assist the finances of Germany in the problem of reparations, the services of Sir William Acworth were sought in 1924 by the Dawes Committee. He formulated a proposal which was submitted by himself and M. Leverve to the Committee and adopted by them.

30. In accordance with this scheme the German State Railway Company was incorporated to operate the State Railways on behalf of the State with a capital of 2 million gold marks of preference and 13 million gold marks of ordinary shares. The former were bearer shares but the latter were registered in the name of the Reich and could not be transferred without the consent of the Reichsrat and Reichstag by a two-thirds majority. One quarter of any issue of preference shares had to be surrendered to the Reich free of charge. The remaining three-quarters could be sold by the Company which would receive the proceeds, the Reich nevertheless having the right to the first half million marks issued or to the proceeds arising from their sale. They were to be issued at not less than par with interest not greater than 7 per cent. and had the right to repayment before the expiry of the Concession. The preference shares were cumulative and, if it was decided to pay a dividend on the ordinary shares, the equivalent of half the sum so paid out in the ordinary shares was to be paid to the preference shares as an additional dividend. By the



31st December, 1929, 1,081 million marks of preference shares had been issued, of which 500 million had been surrendered to the Reich free of charge.

In addition Reparation Mortgage Bonds to the nominal amount of 11 millions of gold marks, bearing interest at 5 per cent. with a 1 per cent. sinking fund, were issued to the Trustee for the Reparations Commission. Finally the Company were to collect and pay over to the Reich or the Agent for the Reparation Payments the proceeds of the transport tax at the rate then in force. In this respect the Company were merely to act as a collecting agency.

The Company had the right to issue bonds ranking after the Reparation Bonds subject to the agreement of the Board of Management. The amount of such loans was also to be regulated by the number of preference shares issued. No loans of this class had been contracted up to the 31st December, 1929.

31. The Law and the Statutes laid down further how the net operating income was to be applied and the order of the various calls on it, reparations bonds, reserves, and amount thereof, dividends, etc. I do not propose to detail these as they have been altered by the later Statutes.

32. A Board of Management was established to administer the Company. It consisted of 18 members of whom nine were to be appointed by the Government and nine by the Trustee appointed by the Reparations Commissioners. Five of the latter had to be of German nationality. Clauses were inserted so that four of the seats on the Board filled by Government appointment should be assigned to the preference shareholders later.

The members of the Board had to be business men of experience or railway experts; they were not allowed to be members of a Parliament of the Reich or of any of the German States. The term of service was for six years, with eligibility to re-election on retirement, three members retiring every second year.

The President of the Board had to be a German and had to be elected every year by a three-fourths majority of the Board voting. As soon as the preference shareholders had three representatives on the Board, the President was to be chosen from amongst them. The Board were granted full authority over the budget and accounts, the distribution of profits subject to the provisions of the Statutes, and over appointments.

The Board were empowered to delegate their powers so far as they thought fit to a permanent committee of six, three from each group, one of whom at least should be a member of foreign nationality, and one should be chosen from the representatives of the preference shareholders. The Board were empowered to fix their own reasonable remuneration.

33. The management of the Company's affairs, subject to the control of the Board, was to be entrusted to a Directorate. The Board were to appoint the Director-General for a period of three years by a three-fourths majority of the Board. The other Directors were to be appointed by the Board on the Director-General's recommendation. All of the Directorate had to be of German nationality and none could be members of the Board. Their appointments had to be confirmed by the President of the Reich. The Board could remove the Director-General at any time by a three-fourths majority of the members voting, but such removal

would not affect his right to pay any allowances under his contract of appointment.

A Railway Commissioner was also to be appointed by the foreign members of the Board, his term of service being three years. His duties were essentially to watch over the interest of the Reparation Bondholders. For this purpose he was given extensive powers of intervention and of inspection, both financial and technical, and attended meetings of the Board and of Committees, but had no vote.

34. As regards the power of rate making I cannot do better than give a translation of clauses 33 and 34 of the Law incorporating the Company which govern this, as they are very clearly expressed.

#### CLAUSE 33.—TARIFFS.

(1) The Company shall at the outset charge the tariffs at that moment in force. Subsequently it may change these tariffs or any of them under the conditions set out hereafter. The provisions contained in Treaties in force in reference to tariffs shall be observed by the Company.

(2) There shall be submitted for the approval of the Government any alteration in the methods of tariff application prescribed by the Tariff Instructions in the general tariffs, including the general tariff regulations, in the freight classification and in the scale of supplementary charges, as also the introduction, alteration or withdrawal of international or exceptional tariffs or of any other special concessions in tariffs.

(3) The approval of the Government shall be held to have been given if the Company has not received a reply from the Minister of the Reich responsible for the control of the railways within twenty days of its application for approval. The definite decision of the Government on any tariff proposal submitted by the Company shall always be given with the least possible delay. The existing tariffs shall remain in force until the Government has rendered its decision, or, in case of disagreement between the Government and the Company, until the judgment of the Tribunal, or, as the case may be, of the Arbitrator under the provisions of clauses 44 and 45 of this Law, has been pronounced.

(4) The Government may renounce the right of previous approval in such cases as are not of important public interest. In any such case alterations made are to be notified forthwith to the Government.

(5) The Government may further call for a reduction in tariffs or any other alterations in tariff provisions which it considers necessary in the interests of the national economy. In the case of difference between the Government and the Company the case shall be referred to the Tribunal or the Arbitrator under the provisions of clauses 44 and 45 of this Law.

#### CLAUSE 34.—PROTECTION OF THE INTEREST AND SINKING FUND.

The rights of supervision and control of the operating and tariffs of the Railways reserved to the Government by the present Law shall never be so exercised by the Government as to prevent the Company earning a net revenue adequate to secure the regular payment of interest and sinking fund on the bonds and the preference shares.

35. The Special Tribunal to which reference is made in the foregoing clauses of the Concession was to consist of an experienced judge of German nationality to be appointed by the President of the Supreme Court of the Reich for a period of five years and two other members appointed specifically for each case by the President of the Supreme Court, one on the nomination of the Government and the other on the nomination of the Company. To this Tribunal was to be referred any case of difference between the Government and the Company in respect of the interpretation of the Concession and the Statutes.

If it was considered that a decision of the Tribunal was liable to imperil the service of the Reparation Bonds or if any delay of the Tribunal in giving its decision was likely to have a similar effect on the service of these bonds, appeal could be made to an Arbitrator of neutral nationality to be appointed by the Court of International Justice, and his decision was to be final and without appeal.

36. Judged by the financial results and by the report of the Commissioner, who was a Frenchman and appointed to supervise the undertaking from the Reparations point of view, this constitution apparently worked well. The net operating surplus went up from 694·2 million reichmarks in 1926 to 860·2 in 1927 and remained, roughly speaking, at that figure up to and including the year 1929. After meeting the service of the Reparation Bonds, the allocations for the legal reserve and for the special reserve to write off plant acquired since the concession, a sufficient balance was left to meet the 7 per cent. dividend on the preference shares and a carry forward of between 167 and 179 million marks. No dividend on the ordinary shares was paid, but it was not anticipated that this would be possible during the early years. These results were achieved despite an increase in wages of 20 per cent.

Five cases had been submitted to the Railway Tribunal; two of these involved staff questions, one the question of contributions to be made to local authorities, one the liability of the Company to stamp duty in Prussia, and, finally, one case regarding tariffs. In this case, with the consent of the Government, the Company's request to raise rates so as to produce an additional 250 million marks revenue, which had been refused by the Government, was referred to the Tribunal, who found in favour of the Company, and the rates were raised accordingly.

In judging the success of the administration it must be borne in mind that there were foreign members on the Board and a foreign Commissioner, one of whose principal duties it was to prevent any undue interference by the Government, particularly such as was likely to imperil the service of the obligations and preference shares of the Company.

37. In 1930 an amended constitution was put into force as a consequence of the Experts' Plan drawn up by the Young Committee. This reconstitution was prompted, not by the needs of the Railways or any failure on their part to meet their reparation obligations, but for other international reasons. For this purpose, a sub-committee, consisting of two representatives of the creditor Powers and two representatives of the Reich, drew up proposals for adapting the Law and Statutes of the Company to the Experts' Plans. These proposals were adopted in their entirety.

The principal points of amendment were the substitution for the Reparation Bonds of a Reparation Tax. The annual amount of this tax payable for 37 years equals the interest and sinking fund of the Bonds and thus no change resulted so far as the finances of the Company were concerned. Provision was made for the issue of further preference shares when necessary. There was an alteration as regards the transport tax, but as the Company previously acted only as a collecting agency this again made no change financially.

38. Under the new Statutes the net operating income, after the operating payments and the reparation tax have been made, has to be applied as follows :—

- (1) to the service of any bonds or loans.
- (2) 2 per cent. of the gross receipts have to be applied to an Adjustments Reserve to cover any operating deficit, as security for the reparation tax, and for the service of any bonds or loans. When the maximum, 450 million reichmarks, of this reserve has been reached, 1 per cent. of the gross receipts have to be applied to form a dividend reserve for the preference shares up to a maximum of 50 million marks. An adjustments reserve of 500 million marks had already been built up under the original constitution, so that this clause merely meant distributing the sums thus received to the new adjustments and dividend reserves.
- (3) Arrears of dividends on the first series of preference shares.
- (4) The current dividend on the first series of preference shares.
- (5) Arrears of dividends on subsequent issues of preference shares.
- (6) The current dividend on the subsequent issues of preference shares.
- (7) Refunds to the Government of any sums it may have paid under its guarantee of the reparations tax. After the above services have been met, the Board will, acting in agreement with the Government, decide on the employment of the balance on the following principles.
- (8) At least 25 per cent. of the balance, not including the balance brought forward from the previous year, will be carried to the dividend reserve up to an amount not exceeding 100 million reichmarks. Although not precisely stated, this is presumably the maximum in each year.
- (9) Special reserves may be established and a special reserve for redeeming preference shares must be established as from 1925 and may be established earlier. Under this clause the Company have already established a reserve fund for writing off plant acquired since the concession started. It is not required to write off plant dating from earlier than that; the Company's duty is limited to maintaining it. The special preference shares redemption reserve has not yet been started.
- (10) A dividend may then be distributed in the ratio of two-thirds of the sum to be distributed to the ordinary shares and one-third to the preference shares as a supplementary dividend.

What happens if the Company and the Government cannot agree as to the employment of the residue after the first seven statutory requirements have been met is not laid down. Certain cases, such as the amount which it is wise to distribute in dividends, are hardly suitable for decision by the Railway Court and, further, it is not specifically laid down that such cases shall be taken before that Court except for the general clause that disputes between the two in respect of the interpretation of the Statutes shall be so dealt with.

39. Foreign representation on the Board is abolished and also the post of Railway Commissioner. The Government will in future appoint the whole 18 members of the Board, except that for each 500 million marks of preference shares there will be one representative on the Board who will replace one Government nominee. Their term of service is, however, cut down from six to three years. The qualifications that they must be business men of experience or railway experts and not members of a German or German State Parliament remain the same. The method of selection of a President remains the same but his appointment requires the confirmation of the President of the Reich. The functions of the Board, the creation of a permanent Committee, the appointment and functions of the Director-General and Directorate, *mutatis mutandis*, remain the same, except that, instead of the Director-General's appointment being subject only to the approval of the President of the Reich, the Board have now to get into touch with the Government beforehand.

The other important change in respect of control is the appointment of a Government Representative who is entitled to take part without vote at all meetings of the Board or of its committees.

The Statutes regarding tariffs have not been altered substantially to the detriment of the Company. A special Railway Court has been substituted for the Special Tribunal but the powers have not been altered, only the method of appointment. Their decision is, however, now final and the Arbitrator has been abolished.

As in the previous Law the position, pay, and conditions of work of officials and employees are to be regulated in a certain measure by those of Government officials. They are to be similar and where the Company consider that the special circumstances of the Railways necessitate a deviation from the provisions applicable to Government servants, they have to inform and discuss their intentions with the Government. If no agreement can be reached, the final decision is to rest with the Railway Court.

40. The control which the Government now exercises through the Minister of Transport over the Railway Company may be summarised as follows.

The Government has the right to ensure that the railways are administered in accordance with the requirements of traffic, and of the needs of German industry and that they are maintained and operated in a manner consistent with safety and public convenience.

Particular subjects which have to be submitted for its approval are the closing of any line or of important stations; all major new works or alterations to technical installations, the extension or restriction of electric traction or changes in the system of signalling as well as the abolition of any of the existing classes of passenger traffic; the creation

by the Company of a new undertaking or its participation in an existing one. Proposed passenger time-tables must be submitted to the Government and in case of international trains must be so submitted before their international discussion. The Company must as far as possible comply with the Government's proposals for alterations therein. The Government also has the right to supervise the maintenance of services in times of emergency.

The construction of new lines, the purchase of existing lines and the conversion of a secondary line into a main line and *vice versa* requiring the consent of the Government and the plans for new lines shall be finally decided upon by the Government, which is also the final authority in any dispute between the Company and any German state in regard to new lines or alterations.

The Government may at any time require the Company to build new lines even though the Company considers their construction and operation are likely to be unprofitable and will compete unduly with the Company's existing lines, but in that case the Government will pay for the construction and operation of the new line, if so required, as well as compensation for any loss caused by the competition. If the new line should on the other hand increase the profits on the rest of the system the Government shall be entitled to set these profits off against the cost of operation of the new lines.

In regard to tariffs and rate policy the Government has, as shown earlier, the right to approve any alterations in the regulations, standard rates, freight classifications, charges for miscellaneous services, international and exceptional rates, subject always to each party having the right to submit matters in dispute to the Railway Court.

Finally it has the right to be consulted in the appointment of the Director-General and all appointments to the Directorate must be confirmed by the President of the Reich.

41. While these powers of control, held in check on many points at any rate by the power of appeal to the Railway Court, may not be excessive, the strongest power which the Government possesses is undoubtedly in its right to appoint the whole of the members of the Board and to have its own direct representatives always present at every meeting of the Board or of its committees. The reduction of the term of service of the Directors from six years to three weakens the position of the individual members of the Board and increases the power of the Government to intervene in the management. It opens the way to political pressure being exercised on the members of the Board to make them conform to the wishes of the Government, irrespective of whether it may be to the interest of the Railways or not. There appears to be a grave danger that in course of time the Board will be mainly composed of political nominees.

42. The introduction of a right of appeal to a Court against decisions of the Government on rates questions marks a great change. The view held formerly in Germany, as elsewhere on the Continent, was that railways should not necessarily be self-supporting institutions but rather instruments of economic development, and rates were regarded as instruments of policy. By the Statutes of the German Company the Government ceases to be the sole arbiter and rates in future are to be judged from an economic standpoint.

## BELGIUM.

43. When Belgium seceded from Holland in 1830 railways were still in their infancy. It was only 4 or 5 years since the first steam railway had been opened in England, and, though a project was already on foot for the construction of a line from Antwerp to the Meuse, no line had yet been built in Belgium. The new State determined that it would keep in its own hands the construction and management of all railways. This decision was largely based on the fear that, if privately owned, the control would be in Dutch hands as had been intended for the proposed line from Antwerp to the Meuse, a situation which might have very serious consequences for a small newly-founded State, surrounded by powerful neighbours.

This policy was followed until about 1844 when a complete reversion of feeling took place and private companies were encouraged to construct, run and manage new extensions. After 1870 there was a change and public feeling veered over once again in favour of State management. This was partly as a result of the Franco-Prussian War, partly because of public annoyance at the inconvenience caused by the variations between the tariffs and conditions of carriage of the different systems. As a consequence the State started to buy back the various concessions which it had granted, until by 1914 most of the main railways of Belgium were State-owned and State-managed. This principle was continued after the War until 1926. The State Railway system at that time included the whole of the standard gauge railways in the country, with the exception of 212 miles known as the Nord-Belge and leased to the Nord Company of France.

44. There was in addition the extensive metre gauge system managed by the "Société Nationale de chemins de fer vicinaux." This system must not be considered, however, as in any way parallel to the metre gauge railways of India. The Belgian railways are purely agricultural lines of very light construction running often along the sides of the roads, and are controlled by a company whose shares are held by the State, the provinces, and the communes. This company has always been independent of the State Railway Administration and has always been run on the lines of a private undertaking.

45. The policy of State management of the standard gauge railways had not, however, been without its critics both before the War and after. On the one hand, particularly before the War, the Government was accused of using the railways as a "milk-cow" to gain extra revenue, but later and closer examination showed that on the contrary in many years, if proper allowance had been made for charges on capital and for depreciation, there had been in reality a deficit in working. The accusation was possible owing to the fact that the railway budget and accounts were not kept separate from the general budget and revenues.

It was also alleged, and with considerable justice, that the State management owing to the action of Parliament had been forced to buy its fuel and materials in local markets when imported goods would have been cheaper. Political pressure had been brought to make the administration grant preferential tariffs and other privileges which favoured the constituencies of members of the Government Party. Stations of costly and unsuitable design had been built to satisfy local pretensions and expensive local material had been used in their construction. One of the

administrators of the State Railways also drew attention to the exaggerated cost of construction of many of the lines built by the State, due partly to the inordinate time taken over their construction. He also drew unfavourable comparisons as to the excessive number of locomotives on the books, many being of inefficient and out-of-date design, as to the excessive expenditure on fuel and as to the maintenance and renewal of rolling-stock. No valid defence was offered to his criticisms. On many occasions, too, the various "rapporteurs" of the Railway Budget to the Chamber of Representatives had pointed out the disadvantages under which the State laboured in its railway management as contrasted with a private undertaking.

46. After the War successive Governments introduced various measures with the object of separating the railway finances from those of the State and of making the railway administration autonomous, but none of these were successful. Finally, in 1926, as a consequence of the serious financial conditions of the country and the fall in the Belgian franc, a Government of political union was formed which included all parties and was vested with special emergency powers. In order to overcome their main difficulty, which was the large number of Treasury Bonds outstanding, they decided to mobilise the assets of the State in order to liquidate the large floating debt; and of these assets the most important was the Railways.

47. With this object in view the Government created a new company called the "Société Nationale des Chemins de Fer Belge," to whom the right to run the State railways was granted for a period of 75 years, the State reserving the right to redeem its property after 21 years, the conditions of redemption being laid down.

Other reasons which prompted the action of the Government were that under direct State management the working results had gradually got worse, the percentage of expenses to gross receipts having risen from 71.98 per cent. in 1913 to 93.33 per cent. in 1925. It was considered that better results could be obtained by a company which was not so open to political pressure. A company could introduce with less friction the increase in tariffs which had become necessary if the Railways were to be placed on a sound financial basis and cease to be a source of loss to the State, and also could compete better for the international transit traffic which, owing to the situation of Belgium, was vital to her railways and for which France had become a serious competitor since the acquisition of Alsace-Lorraine. The success too, which had been attained by the German National Railway Company, set up under the Dawes plan, afforded an indication of the favourable results which might be expected from the establishment of an undertaking on similar lines in Belgium.

48. The capital of the company thus formed consists of 10 million ordinary shares of 100 francs each and 20 million preference shares of 500 francs each. The whole of these shares, amounting to a nominal value of 11 millions of francs, was handed over to the Belgian Government. The ordinary shares must by law be retained by the State. As each of these shares has one vote whereas there is only one vote to 10 preference shares, the final control of the undertaking is thus ensured to the Belgian State irrespective of what may happen to the preference shares.

The preference shares, which were handed over to the Government by the Railways, were in turn issued by the Government to the public in such amounts as the Government thought fit. The fixed portion of



the interest on these shares is paid by the Government and is not a charge on the Railways. The Government, therefore, settles what will be the rate of fixed interest on these preference shares at the time when it disposes of them to the public. It does not concern the Railways. Up to date the rate on such as have been issued to the public is 6 per cent. In addition these preference shares have the right to participate with the ordinary shares in any profits remaining after the statutory liabilities have been met, and this applies both to the preference shares retained by the Government and to those in the hands of the public.

These preference shares, or rather such portion of them as was necessary, the Government employed in reducing its floating debt by making compulsory the exchange of all 6-months Treasury Bonds, and those falling due on the 1st December, 1926, against the new preference shares. The Government further, in order to give confidence in the face of the falling currency, guaranteed to pay the dividends on the new shares on a basis of 175 francs to the £ sterling. The holders also received a bigger dividend than they did on the previous bonds, whilst the Government was freed from the peril of its large outstanding short-term liabilities. The Government has the right to sell any of the preference shares still held by it. Ten per cent. of the funds received by the Government from the disposal of the preference shares, whether by exchange or sale, must be placed at the disposal of the Society for use as working capital. The Society has to pay to the Treasury the same interest on them as is applicable to that particular public issue of preference shares.

Although the preference shares figure in the balance sheet, they only concern the Society in so far as they share equally with the ordinary shares in any surplus profits.

The Society can only raise loans or issue debentures with the authority of Parliament. An application to issue 600 million francs of debentures was made to Parliament in 1929, but was only authorised in December, 1930. The actual issue, which was at 5 per cent. and redeemable in 60 years, was only made in March, 1931. The Board also cannot undertake any extension of the system of railways unless so authorised by law.

49. While in the general financial structure the resemblance to a private company was retained, this was not attempted as regard its constitution. An annual General Meeting must be held to which the balance sheet and profit and loss account must be submitted, but the preference shareholders have no voice in the selection of the Board. This consists of 21 members, whose term of service is 6 years. They are chosen as follows :—

Ten members, selected on account of their individual competence, are nominated by the Government on the proposal of the Board. In case of dispute these will be nominated by the Chamber of Representatives by a majority of three-quarters.

Five members are nominated from a double list of candidates proposed by the Public Debt Commissioners.

One member is nominated from a double list of candidates proposed by the members of the Superior Council of Commerce and Industry and by the members of the Superior Council of Professional and Business Men, each Council proposing one candidate.

One member is proposed in a similar fashion by the workmen and employee members of the Superior Council of Labour.

One member is proposed in a similar fashion by the elected and co-opted members of the Superior Council of Agriculture.

Three members are nominated and, in case of a vacancy, replaced by the staff.

Members receive a fixed salary of 1,000 francs a month and must retire on attaining the age of 66. No Minister or member of either Legislative Chamber can become a member of the Board till 2 years have elapsed since he surrendered his office or seat.

The Minister of Railways, if he sees fit, can attend meetings of the Board. In that event he acts as chairman and has a vote.

50. The Board appoint the Director General from outside their own body and have full powers to appoint and promote the staff. They can in theory also fix scales of pay, but in this their hands are tied by a Commission of Labour, half the members of which are appointed by the Board and half by the staff, with a judge as chairman. This body, in fact, establishes rates of pay and conditions of labour.

The Board have authority to make all necessary purchases or enter into contracts with the exception that the approval of the Minister is necessary in the case of any acquisition, alienation or exchange of property where the value exceeds one million francs, any contracts for more than 16 years for more than a million francs, or any negotiated purchase for more than half a million.

The Board have the power to elect from their own members a permanent committee, of whom one must be a representative of the staff. This committee will prepare questions for submission to the Board.

A particularly interesting point to note is that after the balance sheet and profit and loss account have been passed by the General Meeting they must be submitted to the Legislative Chambers, but these bodies have not the right either to approve or reject them. The accounts are inspected, however, by 6 Commissioners, 3 of whom are appointed by the Chamber of Representatives and 3 by the Senate. The restrictions as regards being members of those Chambers which apply to members of the Board apply also to these Commissioners. Their appointments can be terminated at any time by the Chambers who appoint them.

51. In the matter of tariffs, the law creating the National Railway Society states that it will fix and modify its tariffs, but due observance must be paid to the legal prescriptions in force at the time when it was established. Nevertheless, the Government will always have the right to insist on rates being lowered or to forbid their being raised.

This arbitrary power has been somewhat modified by a subsequent convention made in January 1927 between the Belgian State, the Public Debt Commissioners and the National Railway Society. By the terms of this convention the Society undertook to regulate its tariffs so as to give 270 million francs of interest to the ordinary shares held by the State. The State, on its side, recognised that, while taking care that the economic development of the country was not hindered, it had the moral obligation of exercising its powers so that the preference shareholders should receive an extra 27 per cent. over and above the 6 per cent. paid by the State. This is equivalent to a net surplus for division between the preference and ordinary shares of 540 million francs.

The Advisory Tariff Committee, which in the days of state management gave its opinion to the Minister on any proposed changes in tariff before they were put into force, was retained and is quite separate from the Society.

52. In fixing the sum which may be distributed as dividend, the law lays down that the sums necessary to maintain the renewal and amortisations funds must be debited to working expenditure. These contributions must be calculated on a normal commercial basis in accordance with formulæ to be settled by agreement between the Minister and the Board.

2½ per cent. of the gross receipts must in addition be applied to the establishment of a reserve fund until the latter, including the interest from the funds thus invested which are placed to its credit, reached a total of 20 per cent. of the average gross receipts of the last five years.

From the remaining net receipts 5 per cent. must be deducted for allocation to the staff. This sum will be divided between them in the proportion settled by the Board. The balance will be distributed equally between the preference and ordinary shares.

53. The new Society has been in existence now for approximately four years and so far the scheme appears to have worked well. The operating results have undoubtedly shown a marked improvement when compared with those of the previous state management, and this is the more noteworthy from the fact that the same Director-General is in office and extensive powers have been delegated to him by the Board. The only conclusion which can be drawn is one unfavourable to direct State management.

Turning to financial results, for each of the years 1928 and 1929 400 million francs were distributed as dividends, and in the year 1930, when the world depression had started 200 millions. It will be seen that in no year has the figure of 540 million francs, laid down in the convention of 1927 as the net surplus which should be aimed at in fixing rates, been reached. In the year 1931 the undertaking will in addition have to bear the charge on the new 600 million francs of debentures.

54. Critical examination of the scheme, however, reveals certain weak points which might have serious results. The first of these is the arbitrary powers possessed by the Government over tariffs, modified though these have been by the convention of 1927. Up to date they have not been abused, and the reasonable increases demanded by the Society have been approved by the Government with a few minor modifications. But abuse is not to be expected during the first years while the project is still a new one introduced by a Government containing all parties. It is more likely to occur later when the fears which prompted its introduction have been forgotten. It is significant too that the net surplus set as a standard for regulating rates has never yet been reached and so is already in danger of becoming a dead letter, which will leave the Government as sole arbiters in the question.

Another danger lies in the position of the Minister. He performs two separate and conflicting functions; he presides, if he so wishes, and votes at Board Meetings at which decisions are taken, and later, as Minister, he has to approve or refuse those decisions.

The Government, in addition to its control over rates and to the presence of the Minister at Board Meetings, has the further power that

it can apparently revoke the nominations of the whole of the Board with the exception of the three members nominated by the staff. It can also by its preponderating vote at the Annual General Meeting refuse to accept the accounts.

So far as the control of the Parliament is concerned, this is limited to interpellating the Government, but it can in the last resort make the subject one of confidence and thus force the Government to exercise its powers of revoking nominations to the Board.

55. It was clearly the intention of the framers of the scheme to avoid the intrusion of politics into the appointments to the Board, and the Society was fortunate in the original selections made. The power of revocation of appointment held by the Government is, however, formidable and, although it does not actually select any itself the final nomination is in its hands and it can refuse any or all of the names proposed to it by the selecting bodies. It remains to be seen, therefore, whether in the long run it will be possible to keep the influence of politics out of these appointments.

56. There is one final point to which attention must be drawn. The inefficiency of the State management had been recognised for some years and attempts had been made to separate the finances and budget of the Railways from those of the State. None of these succeeded, although some of them were initiated by the Government itself. It was only the imminence of financial crisis and fear of the results which finally caused the adoption of a measure which had been recognised as necessary by all who were acquainted with the subject.

#### FRANCE.

57. The railways in France have always been State-owned. By the terms of the first concessions, those framed under the law of 1842, the State carried out the construction of the sub-grade and of the stations, and then conceded the management and operation for a period of years to private companies who had to provide the permanent way and all rolling-stock and stores. Various modifications took place in these concessions until 1883 when a convention was drawn up between the Government and the six principal railway companies. The most important financial condition of that convention was that the Treasury guaranteed a fixed dividend and sinking fund on the shares of the various companies, and shared in profits when net revenue exceeded a named sum. The rate of dividend varied as between the companies. To start with, all the companies, except the Nord, had to have recourse to the guarantee, but by 1913 the East and the Paris—Lyon—Méditerranée had cleared off their debts under the guarantee and all three were earning substantial surplus profits. The Midi and the Paris-Orléans still had large deficits each year which had to be met under the guarantee. The Ouest Railway Company had fallen so heavily into the debt of the State under the terms of the guarantee that the concession was bought back by the State in 1909 and was thenceforward managed directly by it. This did not improve matters and the annual deficits on the system continued to grow larger.

58. The war, however, changed the whole situation ; and owing to many factors, the increase in the cost of all stores, the increase in wages, the introduction of the 8-hour day, the railways soon found themselves faced with heavy deficits. The total deficit of the six principal systems

for 1919 was 1,201 million francs, and for 1920 2,997 millions, despite an increase in tariffs which ranged from 70 per cent. for third-class passengers to 140 per cent. for goods.

The financial difficulties of the companies were so great and the machinery for authorising increases in tariffs was so slow in action that it was imperative that new agreements should be concluded with the State. Actually only one convention was passed between the State on the one hand and the five Companies and the Administration of the State Railways on the other. This was made in 1921 and the Alsace-Lorraine Railways were subsequently made parties in 1923.

59. Under the clauses of the Convention which governed the future conduct of the undertakings, the Companies, and in this term I include the Ouest Administration for the present purpose, retained their separate individuality and constitution, but two new organisations were created, a Committee of Direction and a Superior Railway Council.

The former includes only representatives of the Companies, three from each company, making 18 members in all. Its aim is to co-ordinate the management of the systems and the particular objects to which it devotes its attention are co-ordination in technical matters, standardisation of material, rules for the division of traffic and exchange of rolling-stock, rules of working, and the consideration of modifications required in the Statutes regarding conditions of work, pay and pensions. A Government Commissioner attends the meetings. He can demand that any question which he considers appropriate should be placed on the agenda, summon a meeting of the Committee, or ask for a second discussion on any subject, the first decision on which appears to him to be opposed to the public interest. Decisions are taken by a majority, each railway system having only one vote. The railway to which the Chairman of that particular meeting belongs has a casting vote. Decisions, when taken, are binding on all the systems.

60. The object of this Committee is to co-ordinate the actions of the different systems; the object of the Superior Railway Council is to co-ordinate the administration of the railways with the general interests of the country.

This body consists of 60 members made up as follows :—

- (a) The 18 members of the Committee of Direction.
- (b) Two representatives of the staff from each of the 6 systems, nominated by the Minister of Public Works.
- (c) 30 representatives of the general interests of the country appointed by decree on the proposal of the Minister of Public Works.

In addition there is a Chairman appointed by decree on the proposal of the Minister. The Director of Railways at the Ministry attends meetings as Government Commissioner.

This Council is primarily an advisory body but in certain cases is said to possess executive powers. The Minister has to place before it all questions, technical, commercial, administrative and financial, which affect all the systems and he may, if he thinks fit, place before it any important questions which affect one or more.

The Minister cannot take a decision contrary to the advice of the Superior Council until after that body has deliberated the question a second time. In the same way the Committee of Direction can demand a reconsideration by the Superior Council if it considers that any resolution of the Council or decision of the Minister is opposed to the interest which it is its duty to protect.

61. One of the questions on which the Council is recognised as having executive power is that of tariffs, and particularly of "raising tariffs in such measure as is necessary to re-establish the balance between receipts on the one hand and expenditure and loan charges on the other." Increases in tariffs are proposed by the Superior Railway Council for the final approval of the Minister of Public Works. Increases in tariffs will have legal force if the Minister of Public Works, after consulting the Minister of Finance, does not object to them within a month.

Furthermore, the Minister of Public Works, with the consent of the Cabinet, can enforce the lowering of particular tariffs, which he thinks injurious to the public interest, even though the Superior Council has twice taken a contrary resolution. Finally all increases in tariffs which raise goods rates by more than 180 per cent. or passenger rates by more than 100 per cent. have to be ratified by Parliament, and the maxima are to be subject to review every five years.

The powers of the Superior Railway Council are hardly, therefore, such as we would call executive as its decisions have to be approved, either specifically by the Minister or by his tacit acquiescence and in certain cases it can be overridden.

62. The financial arrangements are exceedingly complicated. The basis is the Common Fund, into which go the surplus profits of the prosperous systems and from which the deficits of the less prosperous ones are made good. I do not propose to enter into all the details of these complicated arrangements but to give merely a general outline, as to do more would lend no assistance to the present problem and, up to date, the results of the Common Fund are not such as to encourage imitation.

Broadly speaking, against the gross receipts of each system are placed (a) working expenditure, (b) the sum of the loan charges and the effective charges of the "capital social" after making allowance for any repayments or annuities paid by the State or public bodies, (c) shortfall on ancillary services and joint undertakings, (d) a sum varying with each Company which, when added to the interest on the "capital social" as allowed in (b), represents the dividend guaranteed to that Company by the Conventions of 1883 [a special adjustment was made for the State Railway], (e) rewards both to the Company itself and to its staff to encourage increase of receipts and decrease of expenditure. In both cases percentages of any increase of receipts or decrease in expenditure are allotted as rewards, with adjustments to allow for increases in tariffs. On the other hand, there is a penalty for the companies if results are not so good as in 1920.

63. It was recognised that for the first six years there would be a deficit in the Common Fund. Capital would also be required for new construction, to restore the systems to as good a condition as they were in before the War, and for a large improvement and re-equipment programme as well as for certain losses during the War which some of the Companies had covered by borrowing on Treasury guarantee.

For the monies thus required the Companies were to borrow by issuing loans and debentures, the service of which, both as regards interest and sinking fund, would be at the charge of the State. The object of this, as explained by the Rapporteur to the Senate, was to use the Companies as bankers to the State. The service of these loans was carried against the Common Fund. Any deficit in the latter was a charge against the State.

64. During the first three years of working there were very heavy drafts on the Common Fund from every system, except that of Alsace-Lorraine, which was included for the first time in 1923. By the end of these three years the sums which they had drawn from the Common Fund varied from a total of 1,400 million francs by the State Railway to 190 million francs by the Est. These demands, however, were decreasing, with the result that in 1926, four railways, the Nord, the Est, the P.L.M. and the Alsace-Lorraine, contributed substantial surpluses to the Common Fund, which in that year showed a surplus of 580 million francs. In 1927 the same four systems again were able to contribute to the Fund, though to a small degree, and there was a shortfall in the Fund for the year of only 253 million francs. In 1928 there was a surplus of 677 million francs for the Fund, and in 1929, 300 million francs. In 1930, on the contrary, as the results of depression, there was a shortfall of approximately 2,000 million francs, or about £16,000,000 sterling, and it is estimated that in 1931 there will be a shortfall of 3,360 million francs, or about 26½ million sterling.

The whole of these sums cannot, strictly speaking, be called deficits as far as the systems are concerned because, as explained above, many of what we should call capital charges have been included and also a good deal of amortisation. On the other hand, in the case of new construction four-fifths of this is borne by the State and the service of this portion of the capital cost is repaid by the State to the individual system and, therefore, does not fall either on it or on the Common Fund. In other words their system of accounting does not allow one to judge whether, according to our way of thinking, the individual systems have deficits or not.

The Common Fund itself, however, as established under this system of accounting, has undoubtedly a heavy debit balance. The prosperous years of 1926, 1928 and 1929 did not provide surpluses sufficient to meet the shortfalls of previous years, and 1930 has added a big increase to the debit balance. This is met by Treasury borrowings and the service of these loans has to be met by the State.

65. As regards tariffs, it is best to ignore the years when the franc was fluctuating as they cannot be taken as a true criterion. In most cases the increases recommended by the Council appear to have been approved, but, as is inevitable with a Government as the final authority, only after considerable delays. A general increase of 15 per cent. is now under consideration.

With any independent body as the final authority on rates questions there is bound to be a certain lag between the time when the managing authorities have come to the conclusion that an increase is necessary in order to preserve financial stability and the time when the authority can be persuaded to grant them, as that body will require very complete proof before giving their sanction. If that body, in addition to having

little knowledge of the subject, is also political and, therefore, unwilling to incur the odium of raising rates and fares, the case for an increase must be overwhelming in order to be successful, and the delay is liable to have dangerous consequences.

It is interesting to observe in this instance, as in those of Germany and Belgium, the departure from the previous theory that railways should not necessarily aim at being self-supporting and that rates should be used as instruments of policy. Although the object has not been attained, the Convention lays down clearly that rates should be so framed as to make the Common Fund balance.

66. Other features in the French scheme which are worthy of attention are the machinery provided in the Committee of Direction for a uniform control by experts over all the railways on technical matters. Further, it establishes a body in the Superior Railway Council to supervise the railways in which, not only are the various interests of the country at large represented, but the railways themselves are given sufficiently large representation to ensure that the management and technical points of view receive adequate consideration. Against this may be set the disadvantage that it appears to our minds rather an unwieldy body, consisting as it does of 60 members, and to partake rather of the nature of a debating assembly than of one which is required to take executive decisions.

#### ARGENTINE REPUBLIC.

67. Railways in the Argentine Republic can be best divided for the purpose of the present memorandum into three categories :—

- (1) Federal State Railways.
- (2) Provincial Government Railways.
- (3) Privately owned Railways belonging to British, French and Argentine Companies.

Of 24,000 miles in the republic more than 19,000 are privately owned, of which about two-thirds are the property of British companies and less than 300 miles belong to the only Argentine company. The Provincial Government railways only constitute about 340 miles whilst those owned and managed by the State total some 4,050 miles.

68. The laws which govern the conduct and operations of railways are the Argentine Railway Law of 1891, and its subsequent amendments, and the Mitre Law of 1907, the latter of which applies only to privately owned railways. Under the law of 1891 a National Railway Direction was established under the control of the Minister of Public Works and presided over by a Director General. This National Railway Direction is a Government department and its duties are to see that the laws concerning railways in all branches are observed. It has no direct responsibility for management or operation.

The State railways are autonomous and are administered by a General Manager appointed by the Government, while Provincial Government railways are similarly managed under the Provincial Minister of Public Works.



For these classes of railways the National Railway Direction reports on tariffs and recommends them for approval to the Minister of Public Works. The basis for adoption is that they must be "reasonable and just." The National Railway Direction also supervises questions of safety, public convenience and service, new construction, and it reports upon new projects. It also supervises the management of all railways guaranteed or leased by the State.

69. The tariffs of most of the privately owned railways are governed by the Mitre Law. This law was introduced in 1907 and all railway companies formed after that date are subject to it, whilst all formed previously were given the option of accepting it. All British companies did so.

This law provides that until 1947 railway companies shall be free from duties on imported material and from all National Provincial and Municipal taxation in consideration of the payment of 3 per cent. of the net receipts of each year. This 3 per cent. is paid to a special fund, the proceeds of which are to be devoted to the construction and maintenance of roads and bridges, more especially those leading to the railways.

The Government can intervene in goods and passenger tariffs when the average gross earnings of the line for three consecutive years exceed 17 per cent. of the recognised capital in shares and debentures, provided that the working expenses do not exceed 60 per cent. of the earnings. In working expenses can be included provisions to renewals funds, reserves against accidents and claims, fire insurance, pensions and benevolent funds, and annual amounts set aside to amortize terminable concessions. If the working expenses exceed 60 per cent. a proportionate increase is allowed in the percentage of 17 which gross earnings are allowed to bear to recognised capitals.

This formula on a basis of an operating ratio of 60 per cent. gives thus an average rate of 6.8 per cent. on all recognised capital, including debentures, for three consecutive years before the Government can intervene and demand a reduction in tariffs.

The National Railway Direction only gives its opinion in these tariff cases, but in order to watch over the execution of the law keeps permanent auditors in the railway companies' offices who have access to all accounts, whether capital or revenue.

Reports and accounts must be submitted in the form prescribed by the Direction and railway companies must answer any special questions or make any statistical returns which the Direction requires. It has also inspectors stationed at important points on the systems to report upon the general railway service, the adequacy and suitability of equipment, and all questions of safety.

In order to obtain recognition of capital all new works with detailed plans have to be submitted for the approval of the Direction.

All extensions of more than 75 kilometres in length have to be submitted to Congress; smaller branches can be approved by the Government.

70. Theoretically the control of both Federal and Provincial State Railways is the same as for private companies with the exception of the points mentioned above, but in practice politics enter a good deal into the appointments made to these systems.

71. It is universally admitted that the success and development of the Argentine has been in large measures due to their railways, and it is equally true to say that the success of the railways has been due in turn to the wisdom of the Mitre Law in allowing a sufficiently good return to attract capital for developing the railways, at any rate at the rates for money ruling at the time it was framed, while it enforced a reasonable measure of control.

#### AUSTRALIA.

72. In Australia, except in the very early days, State-owned and State-managed railways have always been the order of the day. Each of the States owns and manages its own railways, and, in addition, the Federal Government owns and operates a transcontinental line, a line in the Northern Territory, and a north-south line which has reached as far north as Alice Springs. In New South Wales and Victoria the management is by a Board of three Commissioners, but the other States and the Federal systems are administered each by a single Commissioner.

In order to get rid of the evils which have resulted from direct State management, various experiments have been tried at different times, such as placing the control in the hands of a Commission entirely removed from politics, and in one case the appointments have been for life. The reasons for the ill-success which attended these experiments were thus explained by the Royal Commission which was formed in 1917 to report on Railways and Transportation in Canada. In their report the Commissioners say :—

“The four older States of Australia, New South Wales, Victoria, South Australia, and Queensland, have had a long experience of public ownership. In each State the history has been very similar. Originally, the railways were managed under the direct control of a Minister of Railways, responsible to Parliament. In each State the system was found unsatisfactory. In each State commissions were appointed, with functions substantially similar to those which we are recommending to be conferred upon the board of trustees. In each State the result was improvement. But the Australian commissioners were only appointed for five-year terms. And the lack of permanence in the commissioners' tenure of office prevented a permanent success. The first years of the commission's term were usually the most successful, for then the commissioners had the freest hand to manage their undertaking on commercial lines. Some of the States have gone through a chequered history. The commission has been abolished : and the management has been transferred back to a political minister. Once more the result has been unsatisfactory; and a new commission has been appointed, only, in turn, to fail of success. The main cause, as we read the story, has been the lack of permanence of the commission and the short tenure of office of the individual commissioners.”

Sir William Acworth, who was a member of this Royal Commission, expressed elsewhere his opinion on this aspect of Australian railways in the following terms :—

• “Evidently a commission, which, though composed of individuals personally clean-handed, is not strong enough to crush attempts at jobbery in its neighbourhood, may be even worse for the public interest than a Minister who uses his patronage for political ends. For the Minister can at least be watched and exposed in Parliament by political opponents, while a Commission can take shelter under the cloak of its statutory irresponsibility.”

Further, it has never been found possible to withdraw from Parliament the decision as to the construction of new lines and this has been a fruitful source of political interference. Finally, the power of the Labour Unions in Australia has been so great as to make the position of any commission, and, more particularly, of any such body which was independent of the Government, extremely difficult.

Generally speaking, neither the financial results nor the past history of Australian railways are such as to encourage a country to follow its example.

#### NEW ZEALAND.

73. In New Zealand, although several of the lines were originally built by private enterprise or Provincial Councils, practically all have in course of time been taken over by the Government and have been state owned and managed for many years past. In 1924, at the time the Fay-Raven Commission was appointed, the revenue and capital receipts and expenditure of the Railway were included in the Government Funds and Budget, and the Commission pointed out that, although New Zealand would appear to have escaped the most flagrant disadvantages attached to this system, it was essential to adopt a method of finance more adapted to the needs of a big commercial undertaking.

74. In the matter of control their remarks are so apt to the present problem that I give them in full :—

“In connection with State railways there are invariably difficulties, great and small, brought about by political pressure upon Ministers to give something which, whilst of local value, is not to the general advantage of the railways, or creates an undue preference to one section of the community as compared with another. In the general interests of the country, the farther away a railway administration can be removed from political control the better, in order that an impartial decision may be given upon all questions affecting transportation facilities. In stating this we recognise that where the people own the railways the Government must decide when and where railways are to be built, and what are to be the maximum charges levied upon passengers and merchandize. Having decided these things, however, and appointed competent men to manage the large industrial enterprise of which a railway system is comprised, it is wiser to leave it in expert hands rather than to have political pressure brought to bear upon Ministers, in season and out of season, to do things that ought not to be done and to leave undone those things that, in the general interest, ought to be done.”

The Commission proposed the formation of a Railway Board, consisting of a Chairman and two members, one to control mainly commercial affairs and the other to direct operation. They do not appear to have defined the relationship as between the Minister of Railways and the Railway Board nor their respective powers and responsibilities. Despite this recommendation, the New Zealand Railways were managed up till 1930 by a General Manager reporting directly to the Minister of Railways.

It is interesting to record that the General Manager, in his report for 1929, drew particular attention to the fact that, while the working of the railways had been commercialised, the policy, which was in the

final event controlled by the Government, had not; that in most of the major and in a good many of the minor questions which came up for settlement non-commercial aspects entered into the decision. It is clear also, both from this and the 1930 report, that the finances of the Railways were only separated from those of the Dominion in theory and not in fact. In the 1930 report, too, the General Manager states that "by various strokes of the policy pen, the (Revenue and Expenditure) account has been loaded to an extent of approximately half a million pounds."

Recently, the organisation has been changed and a board has been formed to control the Railways, with the former General Manager as Chairman. I have no definite particulars of the new organisation and, in any event, its value has yet to be proved.

#### SWITZERLAND.

75. In 1909 the last of the large private companies owning main-line railways in Switzerland was bought by the State, and since then the whole of the main-line railway system has been state-owned. There is a considerable mileage of feeder and mountain railways still owned and worked by private companies but these are of purely local interest. The state-owned railways have always been directly state-managed under a Railway Board of Management. The budget of the Railways is entirely separate from the ordinary budget of the State, the Railway Budget being drawn up by the Board of Management and presented by them to the Council of Ministers, who, in turn, after discussing it, submit it to the two Chambers. Any surplus which arises from the railway budget is devoted solely to railway purposes either for capital or for reduction in rates and improvement in service. Any deficit which arises has to be borne by the State. Any loans or capital issues, as well as the decisions on rates and fares, are reserved for the approval of the Legislature.

76. I have found it difficult to obtain much definite information as to the success which has been obtained by this organisation. In 1917 there was a deficit of approximately 73 million and in 1918 of approximately 215 million Swiss francs. For some years after this much of the transit traffic was lost to Switzerland because the high rate of exchange favoured her neighbours with their depreciated currencies. In fact about the year 1921 there was considerable agitation in Switzerland for denationalization. Since then matters have improved and good years have been reported. There has been considerable local agitation, however, against the low rates which the Swiss Railways have had to quote for transit traffic on the grounds that in order to receive a share of this traffic lower rates have had to be granted to foreign freight traversing the country than to local freight of the same classes.

77. The Swiss Railways are generally regarded as one of the best State-managed systems, the two salient features being that the Railway finances are completely separated from those of the State and that the system is run by a Board of Management.

#### UNITED STATES OF AMERICA.

78. Apart from 500 miles in Alaska, built and operated by the Federal Government, the whole of the immense mileage in the United States has, except for a brief period when railways first started, and

again during the War, always been owned and managed by private companies. Many of them have received assistance in finance and land grants from individual States as well as from Congress, but public opinion throughout the country has always been overwhelmingly in favour of private management. This feeling was reinforced by the unfortunate results of the experience of State management during the War.

It was natural in the conditions of the United States Constitution, where so much power is in the hands of the individual States, that the first efforts at regulating railways should be made by these States themselves. The difficulty of regulating railways which traversed many States hampered, however, any effective control, and at the same time the unfair practices of the railways themselves aroused a demand for intervention by the Federal authority. The Inter-state Commerce Commission was therefore established by the Act to Regulate Commerce which was passed by Congress in 1887. One of the main motives underlying this Act was to prevent discrimination by the railway companies between users and to prevent pooling of traffic.

At the beginning the powers of the Inter-state Commerce Commission were very limited; it could not even compel witnesses to give evidence before it. But, gradually by successive Acts of Congress and decisions of the Supreme Court of the United States, its powers have been so increased that at the present time there is no similar body in the world which possesses such extensive and comprehensive powers.

79. Taking first the questions of rates, the Commission is required by law to initiate and establish rates under which the carriers as a whole (or as a whole in each of such rate groups as the Commission may from time to time designate) will under honest, efficient and economical management and under reasonable expenditure for maintenance, earn a fair aggregate annual net return upon the aggregate value of the railway property of such carriers used in the service of transportation. The Commission shall from time to time determine and publish the percentage of such aggregate property value that constitutes a fair return thereon, and the percentage shall be uniform for all the rate groups that may be designated by the Commission.

“In making such determinations the Commission shall give due consideration to the transportation needs of the country, and to the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging these facilities in order to provide the public with adequate transportation.”

In addition to the duty thus imposed on the Commission of initiating and establishing rates, it has the power to fix minimum as well as maximum rates, and powers not only over inter-state rates but also over rates operating within the confines of any State. It has full powers over the classification of goods and can suspend any proposed change in rates.

80. It should be noted that the percentage must be uniform for each rate group of railways. Where any railway earns a net operating income in excess of the percentage laid down for its group, it is allowed to retain half the excess but must return the other half to the Commission. The railway half must be placed in a reserve fund, upon which the railway may draw for the purpose of paying interest, rental of leased lines, and dividends should its net operating income fall below the

percentage allowed, but for no other purpose. However, after and so long as the reserve fund equals 5 per cent. of the value of the property, the railway may employ its half of the excess earnings for any lawful purpose.

The half handed over to the Commission is used to establish and maintain a general railway contingent fund, from which it may make loans to the weaker companies to enable them to meet the needs of the public or may purchase equipment and rolling-stock for lease to the weaker companies. It can only exercise these powers when there is a reasonable assurance that the company can pay the interest or lease. The interest rates on these loans must be at least 6 per cent. and leases must be based on the same principle and include also allowance for depreciation. In this, as in the French scheme, the excess profits in the stronger systems are used to help the weaker ones, but only by way of loans easily recoverable, and losses on the weaker systems are not to be made good by the Commission.

In addition to these far-reaching powers and partly in order to enable it to exercise them, the Commission has prescribed a uniform system of accounting for all railways and the railways are forbidden to keep any account or records not authorised by the Commission.

It has exclusive jurisdiction over the issue of securities by railway corporations and can attach to its approval such terms and conditions as it considers necessary and appropriate. A company must obtain a certificate of public convenience and necessity whenever it wishes to build a new line or extension or to abandon any portion of an existing line.

81. Its powers in respect of the use of wagons are very extensive. It can compel a railway to provide itself with safe and adequate facilities for performing what is called by Americans "car service." This includes in addition to the use and supply of wagons, the use, control, supply and movement of locomotives and the supply of trains. It can order the use of terminal facilities belonging to one railway by another and it can give instructions as to the routing of traffic. If it considers that, owing to shortage of rolling-stock or congestion, an emergency exists, it can, without notice or hearing, (1) suspend all rules and regulations regarding car service, (2) give such directions as to car service, without regard to the ownership of locomotives or cars, as it thinks will promote best the interests of the public, (3) require the joint use of terminals or main line tracks for a reasonable distance therefrom, and (4) give directions for priority or preference.

It also exercises extensive powers in the matter of public safety and it can compel railways to install automatic train-stop or train-control devices where it sees fit.

It was also given powers to sanction the consolidation of competing railways and the acquisition of one railway by another as well as the pooling of traffic and earnings, but no case of this nature will be legal without the sanction of the Commission, which similarly has no power to enforce consolidation on an unwilling railway. The only matter, it would seem, in railway administration over which it does not have authority is wages which is the function of a separate board.

82. State Commissions still exist in all but three of the states, but their functions are entirely intra-state and have naturally become less important as the authority of the Inter-state Commerce Commission has

increased ; they are for all practical purposes subordinate to the Inter-state Commerce Commission. They exercise, rather, initial jurisdiction over the local operations of railways within state limits ; they review rates and charges applicable to intra-state commerce and decide upon local complaints of inadequate and discriminating service. They also often act as the representatives of state business interests in front of the Inter-state Commerce Commission.

83. The powers of the Inter-state Commerce Commission are so comprehensive and far-reaching that the question at once arises as to what is the constitution of the body which exercises them. It consists of 11 members, each receiving a salary of \$12,000 a year. They are appointed by the President, by and with the consent and advice of the Senate, for terms of seven years and may be reappointed. It is provided by law that not more than six Commissioners shall be appointed from the same political party, and appointments have seldom been based on political grounds. In fact, reappointment, even by an adverse political party, has been the custom with only one or two exceptions. The terms of service of not more than two members expire in any given year, thus preserving continuity. Commissioners are not allowed to engage in any other business nor to hold an interest in any railway company.

It is interesting to note that few of the men who have been Commissioners have had railway experience. They have been drawn from many sources, but more lawyers have been appointed than from any other profession. Other Commissioners have previously been professional economists, members of state railway commissions, and business men.

84. The Commissioners elect their own Chairman and it is the custom for each Commissioner to hold the Chairmanship for one year. It copes with its large volume of business by separating its work into five divisions, each consisting of not less than three members, some members sitting in more than one division. Each division is authorised to hear and determine controversies by majority decision in the same manner as though by the full membership of the Commission. Where a petition is rendered for the re-hearing of a decision given by one of the divisions, the case is re-heard by the full Commission. Also any Commissioner who is a member of a division hearing a case may certify the case to the full Commission. Further it is usual for the full Commission to hear any case of national interest or importance and legal questions.

It is not surprising in view of the scope of its activities that the Commission has to employ a large staff. In 1922 it had 1,798 employees and the cost of the organisation to the Federal Government for the year 1920-21 was over six million dollars.

85. Although at times the Commission has been accused of having an anti-railway bias, it has enjoyed a high reputation for impartiality and fairness as a judicial and as an administrative body. There has only been one case of any importance in which the Commission has been accused of political motives, and then rather of having regional than political motives. This was the Lake Cargo Coal case and, although the decision prompted the Senate to withhold its approval to the reappointment of one member to the Commission, the charge of political and regional motives stands on slender grounds.

It is difficult to judge of the effect of the Commission, both in its rate-making and administrative capacities, because since its powers were increased by the Esch-Cummins Act of 1920, until the recent slump and for a short time at the beginning, the United States of America have been enjoying a period of universal prosperity. There is in front of the Commission a demand from the railways for a general increase of 15 per cent. on rates, which at the time of writing has not been decided.

It is important to note that Congress has the power to instruct the Inter-state Commerce Commission by resolution to carry out any policy which the Congress thinks advisable. Thus, at one time, a resolution was passed instructing the Commission to grant as low rates as possible on agricultural produce, and it was incumbent on the Commission to implement that resolution, interpreting the resolution, of course, in the light of any existing legislation. There is danger in such procedure in that it may enforce on the Commission the duty of carrying out a purely political policy. There is only one instance of such a resolution, but the germ of the danger is there and it might in times of depression and stress give an opening to Congress to enforce its own political policies on the Commission. So far this power of resolution has usually been employed to instruct the Commission to carry out investigations, and any abuse of the power of Congress would probably be grounds for appeal to the Supreme Court on the grounds of infringing the Constitution of the United States of America.

#### GREAT BRITAIN.

86. At the time of writing the London Passenger Transport Bill is on its way through Parliament and, if passed, will create a new situation.

Previously, all the railways were owned by private companies and rates and fares were regulated by the Railway Act of 1921. The chief provisions of this Act were that standard charges were in the first place to be drawn up by the railway companies and submitted to a Railway Rates Tribunal, consisting of three permanent members, of whom the Chairman is an experienced lawyer, the second member a person of experience in commercial affairs, and the third in railway business.

The standard charges were to be so framed as to yield to each company a standard revenue equal to the net revenue earned in 1913, together with various allowances for capital which had been raised since or had not become fully remunerative in 1913. The Railway Rates Tribunal considered the schedule of charges submitted, heard any objections which had been lodged to them, and settled the actual schedules to be applied. These charges are reviewed periodically.

If these schedules have been insufficient to give an average annual net revenue up to the standard revenue, and the deficit is not due to lack of efficiency, the Tribunal has the power to raise the standard charges to such an extent as it thinks necessary in order to enable the standard revenue to be earned. If the average net revenue is, or would have been with efficient management, substantially in excess of the standard revenue, the standard charges are to be modified so as to eliminate 80 per cent. of the excess, the remaining 20 per cent. being added to the standard. The Tribunal has laid down standard conditions of carriage and has the power to determine any questions in regard to the rates classification, the reasonableness of charges for any service or accommodation, and the apportionment and disintegration of rates.



The railway companies have power to charge exceptional rates lower than the standard ones, but they must be more than 5 per cent. and not more than 40 per cent. lower, and these exceptional rates must be reported. In this way latitude is left to individual companies to quote rates to suit special traffics.

An appeal lies from a decision of the Railway Rates Tribunal to the Court of Appeal and thence to the House of Lords. One celebrated case on the question of "capital raised or provided" has already been taken to the House of Lords.

Although the companies have never since the passing of the Act received net revenues up to the standard, they have not yet applied to the Tribunal for the standard charges to be raised as they did not consider the time opportune for a general increase in rates nor that such an increase was likely to result in increased revenue. The depression in trade which has lasted ever since the standard rates have been in force forbids any appreciation of the working of this portion of the Act.

87. Questions of safety are dealt with by the Ministry of Transport and powers to build any new works have to be sought by means of private Bills in Parliament.

88. The London Passenger Transport Bill is of particular interest to the present examination in that it aims at establishing a corporation which will, on behalf of the public, take over and manage the whole of the undertakings which are concerned with the passenger transport of London. It is proposed that the Board shall consist of a chairman and four other members, to be appointed from time to time by the Minister of Transport after consultation with the Treasury. It is specified that they are to be persons who have had wide experience and have shown capacity in industry, commerce or finance or in the conduct of public affairs. They will hold office for such term, not longer than seven years, as the Minister of Transport may determine at the time of the appointment and they may be reappointed. The Minister may remove any member for inability and he will determine their salaries.

The Board will have powers to borrow money for the purposes laid down in the Bill up to a prescribed maximum, subject to regulations to be made by the Minister with the approval of the Treasury, and they may issue stocks for this purpose. They will also issue stocks for exchange with existing securities of undertakings. Some of these stocks exchanged for debentures now carrying a Treasury guarantee of principal and interest will enjoy a similar guarantee.

The Board will make an annual report to the Minister and this will be laid before both Houses of Parliament. Their accounts will be audited by an auditor to be appointed annually by the Board after consultation with and with the approval of the Minister.

It will be the duty of the Board to conduct the undertaking and fix such fares as to secure that their revenues shall be sufficient to defray all the charges which the Act requires them to defray out of their revenues, but these will be subject to revision by the Railway Rates Tribunal on the application of a local authority or in certain cases on the application of the Board. Two members are to be added to the Tribunal on this account.

In contradistinction to fares, the facilities to be given will be subject to the decision of the Minister.

This Bill is of particular interest because a body in the nature of a public trust is being created to manage these transport undertakings with stocks which in certain cases carry a Treasury guarantee, and the only account which the Board will be required to render to Parliament will be their annual report and accounts. There has been no question of submitting their estimates to the legislative bodies. Another interesting feature is that, though they are a public body, their charges will be subject to revision by the Railway Rates Tribunal.

89. Although not a transport undertaking, the constitution of the Central Electricity Board affords a good parallel, because it also is a public utility trust. It consists of a Chairman and seven other members appointed by the Minister of Transport after consultation, not with the Treasury in this case, but with such representatives or bodies representing the following interests as he thinks fit, local government, electricity, commerce, transport, agriculture and labour.

The Chairman and members shall hold office for such term, not less than five years and not more than ten years as may be determined by the Minister before the appointment. Their salaries shall be determined by the Minister.

The Board may issue stocks in accordance with regulations made by the Minister with the approval of the Treasury up to a prescribed limit. The Treasury may guarantee in such manner as they think fit any loans proposed to be raised by the Board and will lay before both Houses of Parliament every year a statement showing the guarantees and an account of the sums paid from the Consolidated Fund in consequence. The Board must also make to the Minister an annual report of their proceedings to be laid before Parliament. The interest in this case lies in the fact that the Board may obtain a guarantee from the Treasury, not merely as in the case of the London Passenger Transport Board for certain stocks already enjoying that guarantee, but for future issues, and yet need, like them, only submit to Parliament its annual report and accounts.

#### SALIENT FEATURES WHICH EMERGE FROM PREVIOUS EXAMINATION.

90. Having concluded the survey of those countries whose experience it is considered might prove of value, I think it would be advisable to summarise a few of the salient features which emerge from this examination.

The first of these features is, I think, the importance of separating as completely as possible the finances of the railways, whether State-owned or State-managed, from the general revenues of the country. That was the course adopted by both Belgium and Germany when it was essential that their finances should be placed on a better basis. It has for a long time been the rule in Switzerland, the most successful instance of a directly State-managed system. The rather elaborate French organisation has this as one of its objects, at any rate so far as the State-managed railways are concerned. It is expressly provided for in the Constitution of the Union of South Africa, and in the case of Great Britain it has never been contemplated that the finance of the London Passenger Transport Board should be included in the general finances of the country.

91. The next point which emerges is allied to the first. It is that, while the final control of the railways which it owns must necessarily remain with the State, the best method of control is not by detailed discussion of proposed expenditure and estimated revenue by a Legislative body or any committee chosen from it. To submit to this spasmodic scrutiny the ordinary annual expenditure in a commercial undertaking whose expenses must vary with the work to be done is not only hampering to good management but does not give much practical control over essentials to the Legislature. Supervision of the management is wanted but it should be more continuous and in closer touch with its work and its requirements than a Legislative body can be. Further, the intrusion of any political atmosphere into the details of day-to-day management cannot fail to be harmful to efficiency. What should concern the Legislature above all is policy, and ample opportunity for discussion of policy can be afforded when the anticipated net results of working and the actual results are presented for its approval. This refers only to the yearly results of working, anticipated and actual. When loans are being raised in the name of the State in order to embark on new construction or development or when its guarantee is being pledged in support of new lines, and Legislature naturally has the right of discussion and prior approval.

92. It will have been noted that the principle of interposing between the Legislature and the management some permanent body of control, preferably of business men, is a marked feature of most of the modern schemes. Thus in Belgium many of the members of the Board are chosen not by the Legislature, but by representative bodies. The profit and loss account and the balance sheet have to be submitted to the Legislative Chamber, but these bodies have not the right either to approve or reject them. In Germany it is laid down that the members of the Board must be either business men or railway experts. Apparently the accounts of the company are not presented to the Reichstag for approval. In the case of both Belgium and Germany the organisations appear to have worked well, or, at any rate until the recent economic depression, better than their predecessors.

In France, in addition to the 30 members chosen by the Minister of Public Works to represent the general interests of the country, there are on the Superior Railway Council 18 railway members from the Committee of Direction. Only the final results of the Common Fund are submitted to the Chamber of Deputies and the Senate, and not the individual estimates and results of the Ouest and Alsace-Lorraine Railways.

In Canada the members of the Board, although chosen afresh by the political party in power, have usually been business men and an effort is made to choose one from each province. In this case the estimates are submitted to the House of Commons and are discussed in detail by a committee, but it is doubtful whether this is in any way conducive to efficiency.

The same feature appears in South Africa and to cope with it the General Manager has to take 34 members of his staff from their headquarters at Johannesburg to Capetown where the House sits. This alone can hardly be described as calculated to promote good management.

As regards the Railway Board, the framers of the Act of Union undoubtedly intended to interpose an effective organ of control between the Legislature and the management. The way in which subsequent legislation has operated to diminish the control has already been described.

In Great Britain in the case of the two most important public utility undertakings formed in recent years, the Central Electricity Board and the London Passenger Transport Board, not only will the estimates not be submitted to Parliament, but the Boards are only required to present the results of their year's working to the Minister of Transport to be laid by him before Parliament, but not necessarily for discussion and approval.

It is also of importance to note in how many cases, (Canada, Belgium, Germany and Great Britain, members of the Legislature are expressly excluded from membership of the controlling bodies.

93. When we turn to rates and fares we find that in most cases of State-managed railways the present practice is to keep the rate-making power in the hands of Government, but, where many important railways are privately owned, to place the decision in the hands of a Tribunal or to have an agreement between the State and the companies by which it can be fixed as in the case of the Argentine. The danger of leaving such powers unchecked in the hands of Governments is that they will be used as instruments of Government policy, which in many cases will be opposed to the welfare of the railways and be detrimental to any idea of running them as commercial undertakings and consequently to their efficiency. From this cause have arisen many of the cries on the one hand against the railways being used as "milch-cows" and on the other hand against the heavy losses which they occasion and which have to be met by State revenues. It is important to note that this idea of using rates as an instrument of policy was generally accepted on the Continent, but even there the tendency has been to modify this view. This is shown in the Belgian convention whereby the State recognised the moral obligation of exercising its powers over rates so as to produce a certain percentage on the capital, and in the case of Germany by the right held by each party, the Government and the Railways, to submit any matter in dispute regarding rates to the Railway Court. The only case of rates taken before that Court has been decided in favour of the railways and the verdict was accepted by the Government. This change of attitude towards rates, when coupled with the change in form of administration, is significant as it indicates a growing realisation of the wisdom of the view usually held in this country and America that railways, whether State-managed or not, should be run as commercial undertakings and not as instruments of policy, which, especially in a democratic country, may vary with each Government.

The procedure adopted in Canada is worthy of particular attention because it affords an instance where State-owned as well as privately-owned railways have their rates fixed by an independent tribunal and where by that means in a country where railways have often been one of the main political issues the whole question of rates has been lifted out of the arena of politics. This instance has now been reinforced by the London Passenger Transport Bill which provides that changes in fares shall be fixed by the Railway Rates Tribunal.

## THE EXISTING ORGANISATION AND CONTROL IN INDIA.

94. The railways of India, consisting of some 41,000 miles of various gauges, are split up so far as concerns ownership and management into several different categories, which may be classed roughly as follows :—

- (1) State-owned lines directly managed by the State.
- (2) State-owned lines managed by Companies.
- (3) Company-owned lines managed by Companies.
- (4) Lines belonging to Indian States.
- (5) Miscellaneous lines, including lines owned by district boards and branch lines owned, and in some cases worked, by Indian Companies.

Between the first two there is in practice, so far as administration is concerned, little difference. Although the State-owned lines managed by companies have boards of directors in England, the powers delegated to them by the Railway Board in financial matters are only on a par with those delegated in the case of State-managed railways to the Agents, the title given in India to General Managers. The only powers they have which are not held by the Agents of State-managed railways is that they make their own purchases, make appointments and promotions, and grant leave, but they are bound by the limitations set by the Government of India as to scales of pay, leave, etc. A Government Director nominated by the Secretary of State sits on the Board with powers of veto. His approval has to be obtained for ordinary expenditure in England, and special expenditure in England, such as increasing the London establishment, has to be submitted for the direct sanction of the Secretary of State in Council.

The two railways of any size owned and managed by companies are the Bengal and North Western and the Rohilkhund and Kumaon. These railways have privately-owned capital but, partly owing to the fact that they work certain sections of railway owned by the State and partly owing to the Government power of purchase, their authority in finance and administration, whether over the sections of the line which they own themselves or over those owned by the Government, is no greater than that of the companies which manage State-owned lines.

The lines classed together under the head of miscellaneous include a variety of small lines and branches owned and worked under a variety of conditions. In some cases provision for their construction and maintenance is made by provincial legislation, and legislation by the Central Legislature is only required when they are in physical connection with the main line or are built on the same gauge adjacent to one. Some are owned and worked by rupee companies. In these cases, at the most, control by the Central Government is limited to rates and capital expenditure. In other cases the lines are owned by district boards or rupee companies and are worked on their behalf by connecting main lines.

The final category is the railways in Indian States. The policy of the Government of India regarding the construction and maintenance of these railways has been stated in their Resolution of 6th December, 1923, which was drawn up by them after discussions with the Princes.

The main provisions of this resolution may be summarized as follows :—

“ When a proposal is made that a railway should traverse State territory, the State or States concerned will be afforded full opportunity of making representations on the subject, and such representations will receive most careful consideration. Except when the proposed railway is required for strategic purposes, nothing will, in the absence of mutual agreement, be done which is calculated to infringe the sovereign rights of the States. If after full examination of all possible routes for a proposed strategic railway it is found that there is more than one alternative feasible route, one traversing a State and the others avoiding it, the wishes of the State concerned will, provided conditions are approximately equal, not be overruled. The Government of India recognise the prior claim of a State to construct and work a new line or extension within its own territory subject to the general provisions of the rules laid down.

The assent of the Government of India is an essential preliminary to the construction or extension of any railway by a State.

Railways built by Indian States will be subject to the maxima and minima rates and fares prescribed by the Railway Department of the Government of India which may, for the time being, be in force on Indian Railways generally.”

Thus, in practice, control over the more important of these railways is limited to new construction and rates, and in some cases also inspections from the point of view of safety are made by Indian Government railway officials. The capital requirements of these railways are found by the States themselves.

95. The controlling organisation in British India is the Railway Board. The Railway Department (Railway Board), to give it its official title, consists of a Chief Commissioner, a Financial Commissioner and three Members. The Chief Commissioner is *ex-officio* Secretary to the Government of India in the Railway Department and, as such, has direct access to the Viceroy. He can overrule his colleagues, with the exception of the Financial Commissioner on matters of finance.

The Financial Commissioner has a rather peculiar position. Financial control on railway questions is exercised by the Finance Member of the Governor-General's Council through the Financial Commissioner of Railways. The latter, as a Member of the Railway Board, is in a position to watch from within the operations of the Railway Department and to bring to the notice of the Finance Member any questions with financial implications either at an early stage, or, if necessary, at or before their inception. He is responsible to the Finance Member and not to the Board in matters of railway finance, and has the right to refer to him any case in which he disagrees with the Chief Commissioner or the Railway Department as to its financial aspect. There must be few subjects of sufficient importance to warrant the attention of the Railway Board which have no financial implications. The Financial Commissioner also has a seat in the Legislative Assembly, the Railway Department being represented there by the Member for Commerce and Railways.

The three other members of the Board are in charge respectively of engineering, both civil and mechanical, traffic and staff, having under them directors for the various branches. The Financial Commissioner has under him a Director of Finance.

96. In charge of the various railways are Agents who correspond direct with the Railway Board. The powers delegated to Agents of state-worked lines by the Railway Board include full power to sanction expenditure subject to the limitations prescribed in statutory or other authorised rules and orders, and the limitations imposed by the grant for the year, with the following reservations :—

- (a) Capital expenditure on construction of a new line.
- (b) Open line works chargeable to capital of an amount exceeding 1 lakh.
- (c) Provision of additional rolling stock or special works, such as schools or institutions.
- (d) Creation of non-pensionable subordinate posts exceeding certain limits of pay and revision of scales of pay if scheme costs more than Rs. 25,000.
- (e) Compensation in excess of certain standards to railways servants killed or injured.

It must be remembered, however, that this financial freedom is limited by the grant for the year, which is in fact the estimates of expenditure for that railway as passed and approved by higher authority.

The financial powers granted to the Boards of company-managed lines are the same as those delegated to the Agents of state-managed lines.

97. In turn the Governor-General has full powers from the Secretary of State to sanction expenditure from central revenues upon railways and to delegate such powers subject to reservations on certain subjects which must receive the previous sanction of the Secretary of State in Council. The following are the more important subjects :—

- (1) Expenditure either from capital or revenue on a new line estimated to cost more than 1½ crores or when an objection is raised by an authority owning or working with financial interest, a railway which will be connected with the new line or affected by it.
- (2) Expenditure on a single work or group of works on open lines estimated to cost more than 1½ crores.
- (3) Purchase of branch lines belonging to Indian companies when the purchase price exceeds 1½ crores, the purchase of any portion of a railway belonging to an English company and the sale of any portion of a State Railway.
- (4) All outlay which it is proposed to charge finally to loan funds.
- (5) Any final contracts or modification of contracts with English companies.
- (6) The general terms on which branch lines may be constructed by District or Local Boards or Companies.
- (7) Creation of posts in state-managed railways on pay exceeding Rs. 50,000 a year.
- (8) Departures from certain rules regarding free passages, pensions and gratuities, and provident fund.
- (9) Provision for additions to the list of saloons reserved for the use of members of the Railway Board.

98. The estimates of revenue and expenditure, and those for capital expenditure, for the two first categories of railways, state-owned and state-managed, and state-owned and company-managed, are presented to the Railway Board who scrutinise and usually amend them.

These estimates are placed before the Standing Finance Committee for Railways and then the expenditure portion is embodied in the demands for grants which are submitted to the Legislative Assembly. These demands for grants show votable and non-votable expenditure separate. The latter are items such as salaries and pensions of persons appointed by or with the approval of His Majesty or the Secretary of State in Council, those of persons appointed before 1st April, 1924, by the Governor General in Council to superior posts, interest and sinking fund charges on loans and expenditure prescribed by law, which are not subject to the vote of the Legislative Assembly.

Votable expenditure is placed under 15 demands. No great detail is given in these demands, but the estimates of individual railways, which are submitted with the Budget, give the proposed expenditure in considerable detail. The Assembly may assent or refuse or reduce, but any refusal or reduction is subject to the powers of restoration of the Governor General in Council.

99. The Standing Finance Committee for Railways consists of the Financial Commissioner as Chairman and 11 Members elected by the Legislative Assembly from their body. Under the Separation Convention of 1924, which is explained in more detail below, the Railway Department is required to submit to the Standing Finance Committee, prior to the discussion on the demands for grants in the Assembly, the estimates of railway expenditure, as outlined above, and in addition all supplementary grants as well as all proposals for the creation of permanent superior posts in the railway service, both for state and company-managed railways. Thus a proposal to alter a post of Assistant Traffic Superintendent to that of District Traffic Superintendent would be submitted to the Committee for approval.

The appropriation accounts of railway expenditure are presented to the Public Accounts Committee in the same way as those of other Government departments.

100. The disposal of earnings from state-owned railways is governed by what is called the Separation Convention of 1924, embodied in a resolution of the Legislative Assembly of 20th September, 1924.

This resolution laid down in the first place that the railway finances should be separated from the general finances of the country. This separation has been effected only partially. It next lays down that, after charging against gross earnings of state railways all expenses of the railways and the Railway Board, depreciation, payments to state lines worked by companies of their share of surplus profits, and interest payable either to the Government of India or outside parties such as private companies, the net earnings shall be disposed of in the following manner.

The interest on capital and loss on working of certain lines called strategic lines, which are some 1,600 miles long with a capital of about 33 crores, are borne by general revenues.



One per cent. on the capital at charge of Commercial lines (*i.e.*, excluding strategic lines and capital contributed by companies and Indian States) *plus* one-fifth of any surplus remaining after this fixed return has been paid is contributed to general revenues, the contribution of 1 per cent. being cumulative. These payments are based on the figures of the penultimate year. If, after meeting these payments, a surplus is left, one-third of the excess over 3 crores goes to general revenues.

The share of any of these surpluses taken by the Railway Board forms a Reserve which is to be used for paying any arrears in the annual one per cent. contribution to general revenues, for providing for arrears of depreciation, for writing down capital, and for strengthening the financial position of the railways with a view to improving service and reducing rates.

101. Rates and fares are controlled by the Railway Board which lays down maxima and minima rates. Within these limits the railways are authorised to vary their rates, subject, in certain cases, to the sanction of the Railway Board. For certain Government rates such as postal matter, troops and military stores, the Railway Board prescribes the rates, and these rates under agreements with most of the other railways apply over them also. The Railway Board also prescribes the classification of rates. As noted earlier, maxima and minima rates laid down by the Railway Board apply to Indian States' railways under agreements made with the Princes.

A Railway Rates Advisory Committee was formed in 1926 and consists of a President and two members. The first President was formerly Law Member of the Executive Council. Of the members one represents commercial interests and is nominated specially for each case from a panel elected or nominated by the principal commercial bodies. The other represents railway interests and appears to be permanent in so far as he is not chosen afresh for each case.

The Committee investigates complaints of undue preference, that rates are unreasonable, that conditions as to packing are unreasonable, and that railways do not provide reasonable facilities. Applications for a hearing must in the first case be addressed to the Agent of the railway, who must submit it with his observations thereon to the Railway Board. It rests with the Government of India to determine in each case whether it is to be referred to the Committee or not and it informs the applicant accordingly. When the Committee has investigated a case, it forwards its recommendations to the Railway Department, which, after consideration, gives such orders thereon as it considers advisable.

102. For the discussion of questions of railway policy there is a Central Advisory Council. This consists of the Member for Commerce and Railways as Chairman and 24 other members; of these 24 places, 12 are filled by the members of the Standing Finance Committee, and 6 by other members of the Legislative Assembly chosen by that body. The remaining 6 members are chosen by the Council of State from amongst their numbers. Thus the whole Council is drawn from the two Chambers of the Legislature.

In addition Local Advisory Committees have been established for each railway administration. The Agent of the railway is *ex-officio* Chairman, and the remaining members consist of two nominated by the Local Government, 3 representatives of the local Legislative Council

selected to represent rural interests and the travelling public, 1 representative of the local municipality at the railway headquarters, and 5 members representing industries and commerce, who are drawn from the local bodies representing trade interests.

103. Questions and standards of safety come under the Railway Board, who have for this purpose a number of Government inspectors reporting directly to them. In the case of railways belonging to Indian States, certain of these are inspected by the Government inspectors by agreement with the Government of India.

#### CONCLUSIONS.

104. The final task now remains of trying to apply the experience of other countries to the special conditions of India both as those conditions are at present and as they would be under the federal constitution now contemplated. Before entering on this task I wish to state that I have no claim to personal knowledge or experience of Indian railways or of Indian conditions. Such knowledge as I have is based solely on documents and the views which I shall express will be based solely on the same foundation.

The Government of India in their Despatch of the 20th September, 1930, on proposals for constitutional reform drew attention to the necessity for separating commercial management from direction of policy, and pointed out that the question of the separation of railway finance was one which should be explored. They also outlined the purposes for which the Parliament of Great Britain must continue to be interested and classed these under the headings of Defence, Finance, Services, and the Anglo-Indian community.

Sub-Committee "D" (Federal Structure) of the Indian Round Table Conference classified Railways as to be Federal as to policy and legislation, administration to be Federal to the extent of the powers now exercised by the Railway Board.

105. The administration of the Railways in British India is now highly centralised in the Railway Board; as shown earlier, the administration of even the company-managed lines, except for selection for appointments and purchase of stores, is centralised there. The railways themselves cut across provincial boundaries and pay no attention to them. From the railway, as from the federal point of view, to decentralise, therefore, would have been extremely difficult and would have been accompanied by many disadvantages and few apparent advantages.

106. Turning to the question of the separation of railway finance, the remarks of the Government of India bring into relief the conclusions reached earlier in this memorandum. These conclusions also receive remarkable support from the recommendations of the Acworth Committee.

In addition to the Chairman who was the most distinguished railway economist of his day and one whose advice had been sought by Canada, the United States, and many continental countries, this Committee included three former Agents of Indian railways, two of whom had also been Presidents of the Railway Board. European and Indian commercial interests as well as banking interests were represented on it and one member was a Member of the Council of State. Three of the members

were of Indian nationality. Such a Committee naturally commands a high authority and cannot be accused of ignorance of Indian railways or of Indian conditions. While they disagreed on certain points, they gave a unanimous recommendation that there should be complete separation, that the Finance Department should cease to control the internal finance of the Railways, and that they should be responsible for earning and expending their own revenue and for providing such net revenue as might be required to meet the interest on the debt incurred for railway purposes.

This recommendation, as has been seen, has been only very partially implemented. The funds voted each year "in use" at the end of the financial year in accordance with the ordinary Government practice. The Depreciation, Reserve and Revenue funds are held by the Finance Department, and finally there is the position of the Financial Commissioner, who sits on the Railway Board but is responsible on financial questions not to that Board but to the Finance Member of Council. This is very far from the complete separation envisaged by the Acworth Committee. In view of their recommendation and of the experience of other countries the conclusion is unavoidable that, both in present conditions and as they would be under a federal constitution, an effective separation should be made.

107. The Government of India, in dealing with the necessity of separating the commercial management from the direction of policy, expresses deep regret that "the continuance of the present system, under which the railways are controlled by a secret combination of the executive Government with, as far as the Legislature is concerned, a position to assert its authority, develop the national feeling, the inefficiency and ultimately endangering the financial stability of the country," and spoke of the system of administration "as a failure," while leaving to Government and the Legislature the control of broad questions of policy, would locate the commercial management elsewhere.

This again is in consonance with the experience of other countries and points clearly to the necessity for the establishment of some body which, as I have expressed it, should be interposed between the Legislature and the management. In this the support of the Acworth Committee cannot be eluded. They postulated a purely technical Railway Board under a Member for Communications who would present to the Legislative Assembly the Railway Budget as an annex to the general Budget. But I would submit that the present problem is by no means the same as that placed before the Committee. Sir William Acworth himself has framed more than one scheme which depended upon the creation of a body of this character for its execution. Conditions have changed and proposals must be modified to suit the changes. The present proposal is merely in a way a step forward in the process of development.

108. Before discussing the composition of this body I think it would be advisable to examine the question of the functions which it would be called upon to perform. In the first place I would recommend that the full powers over rates and fares now held by the Railway Board should be transferred to an independent Tribunal. My principal object in doing so, assuming that conditions remain as they are at present, is in order to remove this question as far as possible from political influence. Up to date the rates question in India does not appear to have had any marked

political tendency, but that is no guarantee that it will have none in the future, especially under the stress of economic depression. The Acworth Committee had many complaints about rates before them, though not of a political nature, and, in fact, recommended the formation of a Rates Tribunal, which would decide on the reasonableness of rates, the conditions attached thereto, and the reasonableness of facilities. They apparently contemplated that the maxima and minima rates should be fixed, as now, by the Railway Board and that only complaints should go before the Tribunal. To the grounds which that Committee put forward for the creation of a Tribunal, I add the further one of the danger of political influence so long as decisions on rates are solely in the hands of Government. For this reason I would go further than the Acworth Committee and would recommend that all control whatsoever over such questions should be removed from the Railway Board or their successors in administration, and, following the Canadian precedent, be placed in the hands of an independent Tribunal.

In the event of a federal constitution there is a further advantage to be gained by this course. In accordance with the agreements made, railways in Indian States are subject to maxima and minima rates in the same way as Indian railways generally. There would not, therefore, be any substantial departure, in principle at any rate, in making the rates and facilities on those railways the subject of review by a Federal Rates Tribunal, while there might be considerable objection to the same powers being exercised by a Federal Authority which was administering the railways in British India.

109. For the same reason and also because it is becoming increasingly apparent that safety cannot be entirely divorced from economics, it would seem advisable to place the question of safety also under the Tribunal. Railways in Indian States are now in most cases inspected by Indian Government railway inspectors, and so again there would be no substantial departure in principle from the present state of affairs.

It may seem strange thus to place a duty of inspection on a body whose primary duty is to give decisions on matters of rates, but I can claim in support of my proposal that both the Interstate Commerce Commission in America and the Board of Railway Commissioners in Canada have shown that the functions are not incompatible.

110. For such a large system as that of the Indian Railways, especially if the Indian State-owned railways are added, the Tribunal should consist of at least five members, and I am of the opinion that the President should be a judge or lawyer of high standing. To protect them from being flooded with frivolous complaints it would be necessary to require a deposit which could be forfeited.

The standard by which the Tribunal should judge rates should, I suggest, be also similar to that in Canada. That is to say, the existing rates and fares should be taken as the original basis, and for the future these and any subsequent changes therein should be judged on the grounds of whether they were just and reasonable, bearing in mind changing conditions and the cost of transportation. Included in the cost of transportation would be any obligations under which the Railways might be placed by convention with the Government or by statute as to the allocation of funds for depreciation and reserves and as to contribution to general revenues.

If the proposals regarding safety precautions and inspection were adopted, the present inspecting staff could be transferred *in toto* from the Railway Board to the Tribunal.

111. It is necessary now to revert to the functions and constitution of the new body to be formed to take charge of the commercial management, which I shall refer to as the New Board. The general policy to be followed by the Railways, it is agreed, should be controlled by the Legislature, subject to such checks as it may be considered necessary to give to the Governor-General for the purposes in which the British Parliament will continue to be interested. Many of the main lines of this policy could, it appears to me, be quite suitably laid down in advance, such as the instructions as to the manner in which provision is to be made for depreciation, the limits, both maximum and minimum, of the amounts to be set aside for reserves, the use and disposal of these funds as well as of any provident or other funds, the proportion of these that must be invested and the method of investment, the interest and sinking fund charges which the Railways have to meet against the capital at their charge, the amount which the Railways will be expected to pay over to general revenues in excess of this and the disposal of any surplus which may remain. Most of these subjects are already embodied in the Resolution of the Legislative Assembly of the 20th September, 1924, and, as suggested in the Government of India Despatch, could quite appropriately be included in the statutes establishing the New Board, as has been done in Germany, France and Belgium. With an independent Tribunal which fixed the rates and fares to be charged bearing in mind the statutory provisions thus imposed on the Railways, a general financial policy as regards the normal annual revenue and expenditure would thus be prescribed for the New Board. It will be for the Government and Legislature to observe that this policy was being followed and to modify it as might be thought appropriate.

112. The policy to be adopted as regards capital expenditure is on rather a different footing. In so far as the Railways can meet their capital requirements from their own surplus funds, and I include in that term such of their depreciation, reserve, and other funds as under the statutes they would be allowed to use, I do not think that it should be incumbent on them to seek the approval of the Government or the Legislature except in the case of the construction of a new line. But, whenever new capital has to be raised, either by borrowing from the State or from any other source or a new line is projected, it is essential that the prior approval of the Government and the Legislature should be obtained. Similarly there should be a provision in the statutes restraining the New Board from overspending on capital account in anticipation of approval.

113. Other aspects of policy such as those connected with labour must be under the final control of the Legislature and the Government, and these are above all questions in which it is difficult to draw a line between policy and management. Herein lies, however, one of the advantages of an independent Rates Tribunal because the effect of the action of the Legislature in these matters must be taken into account by the Tribunal in assessing rates.

114. The relations between the New Board on the one hand and the Agents of State-managed railways and the Boards of Company-managed railways on the other could remain on very much the same

basis as at present. They would, as now, submit their estimates for approval to the New Board but would, with the separation of railway finance, have more control over their own accounts.

The powers of the New Board in relation to finance would be enlarged in so far as they would be freed of the detailed control of the Finance Department. Against this they could not enjoy presumably the full present powers of the Railway Board coupled with those of the Finance Department, because they would be subject to such limitations as it might be considered necessary to retain in the hands of the Governor-General to safeguard the matters in which Parliament is interested, as indicated in the Despatch of the Government of India. It would, of course, be necessary to have an independent check of their accounts by the Auditor-General.

Again in the matter of appointments the Despatch contemplates the retention of certain powers by the Governor-General, but subject to these it would appear suitable to place in the hands of the New Board the powers of appointment now held by the Railway Board and also such matters as proposals for the creation of permanent posts which are now referred to the Standing Finance Committee, and decisions as to the scale of salaries. Appointments on company-managed lines could as now be dealt with by the boards of those companies and in general in these matters the relation of the boards of the companies to the New Board might remain on much the same basis as at present.

The New Board would thus enjoy generally the powers of administration now possessed by the present Board, together with the detailed powers over railway finance now exercised by the Finance Department, subject to any limitations which it might be considered advisable to leave in the hands of the Governor-General. They would present annually to the Legislature, through the appropriate Member, a full report and accounts, and, in addition to discussion on this, railway policy would come up for review in the Legislature on the contribution from the Railways to the General Budget as well as on proposals for borrowing or for new construction.

The statutes establishing the New Board would enjoin the procedure to be followed in regard to depreciation and reserves and the other kindred subjects detailed earlier.

115. The best form for the New Board would, I think, be that of a public utility corporation on the lines of the London Passenger Transport Board or the Central Electricity Board. I have considered and rejected the idea of an owning company, because while there would be complications in connection with the creation and exchange of stock there would appear to be no compensating advantages in this case.

The composition of the New Board presents rather special difficulties for one who cannot pretend to have personal experience of Indian conditions, because it is thus more difficult to assess the relative value to be given to the various interests. I would urge, however, that a high proportion of the members should be elected by bodies representative of commerce, industry, banking, agriculture and manufacture, because it is these men above all with their special knowledge who will be wanted to direct the commercial management. Whether it would be advisable to adopt the rule, in force in many countries, excluding Members of the Legislature, I am unable to say, but it is essential, if this is not adopted, that a limit should be imposed at least on the numbers admitted in order

to prevent the Board from becoming a mere reflex of the politics of the country and not of its commerce. Also for so vast a country as India, with important centres so far apart as Calcutta, Bombay and Madras, local representation seems more than usually necessary. To allow for the representation of all these interests will involve a large board. Many of the boards in the continental schemes appear most unwieldy to our view and the difficulty will lie in giving adequate representation to the more important interests without letting the Board swell to inordinate dimensions. I would submit that, despite the extra cost to the railways, the members of the Board should receive remuneration for their services.

116. There will have clearly to be an executive authority in charge of the work of the Board. This will have to be composed of men trained in railway work and drawn from the railway service. I think it would be advisable for the Board to have a large share in their choice ; otherwise there might be continual friction. A possible solution might be that the Board should select the men for these appointments for the final approval of the Governor-General, the scope of their selection being confined to such limitations as the Governor-General might think it necessary to impose. Following the American precedent, the senior executive officer might fill the post of President and Chairman of the Board, while the other officers of the Executive Committee might be ranked as Vice-Presidents. If a Board of this nature were formed there would no longer be any need either for a Central Advisory Council or for a Standing Finance Committee, though it might be found wise to preserve the Local Advisory Councils in order to keep the Agents in touch with local opinion.

117. While I have endeavoured in the organisation which I have outlined to adapt the experience of other countries to the Indian case, I have also tried to keep in view the need for an organisation which would not only be workable in existing conditions but capable of modification to suit a federal constitution. I have, therefore, purposely adhered rather closely to the model of the present organisation so far as concerns the relations of the central authority to the state-managed and company-managed railways in order to cause as little disturbance in these relationships as possible. On the other hand I have excluded from the jurisdiction of this central managing authority jurisdiction over rates and safety, the main points of contact between the present Railway Board and the railways in Indian States. When a federal constitution is established, there would be no need therefore for any violent change, and railways in Indian States could be placed under the control of the New Board or not, according to the form of federation adopted. Also it would be open to them to join this scheme at a subsequent date if this was considered advisable.

In concluding this memorandum I wish to express my thanks to the many authorities and authors from whom I have drawn my information. These are so numerous that it has been impossible to acknowledge my indebtedness in each case individually.

I am,

SIR,

Your obedient servant,

F. D. HAMMOND.

The Under-Secretary of State for India,  
Public and Judicial Department,  
India Office, London, S.W.1.

## APPENDIX II.

## CIRC. No. 5.

## DESIRABILITY OF A STATUTORY RAILWAY BOARD.

The question of the constitution of a statutory railway authority was discussed by the Government of India in paragraphs 194 to 196 of their Despatch on the Indian constitutional reforms. The scheme suggested by them was briefly as follows :—

(a) An authority for the administration of railways would be set up by Statute. The Act would provide for the constitution and powers of the authority, and for the powers of control to be reserved to the Government of India.

(b) Statutory provision would be made for regulating the general principles on which railways should be administered, especially on the financial side.

(c) The control of policy in all important matters would remain with the Government of India and the Central Legislature, but the statutory authority would be free to act without interference in the detailed arrangements it might make to carry out the policies laid down.

The Government of India recognised that it would be impossible to devise a satisfactory scheme of administration without a detailed enquiry by a committee or commission, and recommended that such an enquiry should be instituted as soon as possible. They further proposed that, following the South African precedent, provision should be made in the constitution for the establishment of the railway authority by the insertion of a section in the Government of India Act, the detailed provisions necessary being included in rules made under the Act. These rules would be subject to modification by the Indian Legislature after the lapse of a sufficient period to enable the new authority to establish its position and all concerned to gain experience of the working of the new system.

2. The Federal Structure Committee recommended that railways (including railways to be constructed or acquired in future) should be classified as federal for policy and legislation, and that administration should also be federal to the extent of the powers now exercised by the Railway Board. The constitution of a statutory railway authority does not seem to have been discussed at the first session of the Federal Structure Committee; but in paragraph 19 of the Committee's report it is stated that the Committee "take note of the proposal that a statutory railway authority should be established, and are of opinion that this should be done, if after expert examination this course seems desirable."

When the draft report was discussed by the whole Conference, some of the members asked for further information as regards the implications of this proposal and made it clear that, while they had no objection to an expert examination of the question, they could not commit themselves to the establishment of a statutory railway board. (*Page 286, Indian Round-Table Conference Proceedings—12th November, 1930, to 19th January, 1931.*)



3. In accordance with this recommendation Brigadier-General F. D. Hammond was requested by His Majesty's Government to prepare a memorandum "showing the advantages and disadvantages to be expected from the establishment in India of a statutory railway authority as a feature in the proposed federal constitution." Copies of General Hammond's memorandum have already been circulated.

4. General Hammond has examined the systems of railway administration in Canada, South Africa, Germany, Belgium, France, the Argentine Republic, Australia, New Zealand, Switzerland, the United States of America and Great Britain, and has attempted to apply the experience of these countries to the special conditions of India. His recommendations are summarised below :—

(a) Railway finances should be effectively separated from general finances. This follows the recommendation of the Acworth Committee, which has been only partially implemented.

(b) The full powers now exercised over rates and fares by the Railway Board should be transferred to an independent tribunal, consisting of at least 5 members with a judge or lawyer of high standing as president. This tribunal should also deal with questions of safety and inspection (as in America and Canada).

(c) The general policy would be controlled by the Legislature, subject to such checks as might be considered necessary in respect of matters in which Parliament will continue to be interested.

(d) The Statute could suitably indicate in advance the policy as regards—

- (1) provision for depreciation,
- (2) maximum and minimum amounts to be set aside for reserves,
- (3) disposal of these and other funds,
- (4) interest and sinking fund charges in respect of the capital at charge, and
- (5) contribution to general revenues and disposal of surplus profits.

(e) A new board should be interposed between the Legislature and the management. A large proportion of the members of the board should be elected by bodies representative of Commerce, Industry, Banking, Agriculture and Manufacture. The number of members of the Legislature on the board should be definitely restricted, if they are not to be totally excluded as in some countries. This board would exercise all the powers at present enjoyed by the Railway Board together with the detailed powers over railway finances now exercised by the Finance Department. It would present annually to the legislature, through the appropriate Member, a full report and accounts.

(f) The Legislature would have opportunities of reviewing railway administration, when the report and the accounts are presented to it. Discussions on the contribution from the railways to the general budget as well as proposals for borrowing for new construction or development would also provide occasions for criticism of the railway administration.

5. The question of a statutory railway authority was not discussed by the Federal Structure Committee at the second session. Sir Purushotamdas Thakurdas, however, referred to it in dealing with financial safeguards. He stated that, while he was in favour of a Statutory Railway Board, he considered that this body should be constituted by a Statute of the Indian Legislature and not by provisions in the Government of India Act.

6. The following questions may be considered by the Consultative Committee :—

(a) Should an authority for the administration of railways be set up by Statute ?

(b) If the answer to (a) is in the affirmative, should provision be made in the constitution for the establishment of the railway authority by the insertion of a section in the Government of India Act ?

(It is presumed that an Expert Committee will have to be appointed to work out the details and to draft rules to be made under the Act.)

(c) If the Statutory Railway Authority is to be established by an Act of the Indian Legislature, what provision should be made in the constitution to enable Parliament to safeguard those matters in which it is interested, *e.g.*, defence, finance, etc. (Government of India Despatch, paragraph 192).

COUNCIL HOUSE,  
NEW DELHI,  
the 18th February, 1932.

B. RAMA RAU,  
Secretary, Round-Table Conference  
Consultative Committee.



